1 GENERAL PROVISIONS

1.1 The deliveries, services and offers from a+s shall be made exclu- sively on the basis of these General Terms and Conditions. Deviating conditions of the customer that we do not expressly recognize are non-binding for us even if we do not expressly object.

1.2 All quotes and offers shall be non-binding for the evaluation of the delivered data. If larger expenditure is incurred, we shall inform the customer prior to commencing the work and shall obtain the customer’s consent. 

1.3 Concluding the contract. The contract with the customer gains validity with the customer’s signature of the order confirmation or with performance of the order.

1.4 As a general rule, the transmission to a+s or from a+s to the customer must take place in a secure manner via SFTP and/or, as a minimum requirement for data that merits protection, in an encrypted format. a+s strongly advises against unprotected transmission or delivery of data, as a+s assumes no liability for loss of data, misuse of data and the like for deliveries in transit.

1.5 The return delivery generally takes place within 24 hours. The customer shall bear the risk of return delivery. Fixed deadlines for the express and separate agreement. The stated delivery dates refer to the time of handover to a person or institution specified for the transport.

1.6 Return shipments [returns] of transmissions with updated data delivered by a+s are unavoidable, despite the up-to-date status of the reference data, and do not constitute a deficiency of the updated data supplied by a+s. The return of updated data delivered by a+s as part of the entire range of services is excluded in such a case and any other possible case unless agreed otherwise in a separate offer.

2 REMUNERATION, Payment terms

2.1 The prices are indicated in the respectively valid price list or in the order confirmation. Unless otherwise noted, these prices are net prices. Payment is due at invoice, shipping costs, transport insurance, customs fees and the statutory value added tax shall be charged additionally.

2.2 Unless agreed otherwise with the customer, payments shall be made 7 days after the date of the invoice without deduction.

2.3 Payment by way of bill of exchange is subject to prior agreement.

2.4 If payment is delayed or deferred, default interest or deferred payment interest in the amount of 8% over the base rate of the German Central Bank [Deutsche Bundesbank] is to be paid. In addition, a fixed dunning fee of up to EUR 40.00 pursuant to § 288 par. 5 German Civil Code and provisions of the Gesetzesbuch der BGB, will be incurred.

2.5 If a customer is in arrears with a contractual payment obligation, we are entitled to immediately demand payment of the residual debt that has fallen due and to, if necessary, would become due at a later date.

2.6 For contracts for work and services, we are entitled to charge payment in instalments in the amount of at least 50% of the value of the order or payment in advance.

2.7 We are authorized to withdraw from the contract if the purchaser has provided incorrect information concerning that party’s creditworthiness, our claim for payment is endangered by a subsequently occurring insolvency of the customer, the purchaser is in default despite a reminder and setting a grace period for payment, or we or our vicari- ous agents do not deliver due to strikes, force major, natural disasters and the like, insolvency as the disruption in operations is not within our sphere of responsibility and insolvency as the issue at hand is not merely temporary performance disruptions.

2.8 A customer may assert a right to set-off with counter-claims or retain payments if and as far as customer’s claim is undisputed or has been recognised by a binding judgment.

3 DELIVERY

3.1 The delivery date follows from the order confirmation; fixed dates require an express and separate agreement. The stated delivery dates refer to the time of handover to a person or institution or the technical facility (server, etc.) specified for the transport.

3.2 If delays occur due to the customer or persons commissioned by the customer (e.g. change requests, add late delivery, return delivery of catalogues and materials) or we do not receive mate- rials to be supplied by customer according to schedule, the delivery dates are extended. There is no right of preferential handling of delayed orders.

3.3 If the customer insists on immediate processing despite the dead- line delays for which customer is responsible and, if due to the particularly need for urgency, the quality control that we typically have carried out on the customer side no longer takes place, we shall not be liable for quality defects.

3.4 Force majeure, strikes, impossibility on the part of a+s without fault or that of third-party companies, e.g. list owners, extend the delivery or performance deadline for at least the duration of the impediment.

3.5 Agreed delivery periods shall be considered to approximate delivery dates. In the event of delay, the purchaser is only entitled to withdraw from the contract subsequent to a setting a reasonable grace period.

4 LIABILITY

4.1 Errors in data processing for which a+s or a vicarious agent of a+s at fault shall be, insofar as possible, remedied by a+s free of charge [for service partner and customer] or, if due to the particular damage brought against a+s (including its vicarious agents) require intent or gross negligence on the part of a+s. Any claims for damage are limited to the value of the order, liability for lost profits, for conse- quential damage caused by defects and fidelity losses are excluded. The customer can demand extended liability for cases where a+s can obtain insurance coverage. Additional costs are borne by the customer.

4.2 Complaints due to defective services must be promptly communi- cated to a+s subsequent to becoming aware of the defect and not later than three working days after return delivery. a+s must in any case be granted the opportunity to remedy the defect.

5 WARRANTY AGAINST DEFECTS, claims for damages, notification duties

The warranty rights of a commercial purchaser require that the purchaser promptly, and no later than 14 days after it is possible to recognize the defect, performs its duties as prescribed by § 377 German Commercial Code [Handelsgesetzbuch, HGB].

If the customer is not a merchant, the notice period for obviously recog- nized and recognizable defects is 7 days after the defect was recog- nized. If a defect is not recognized in due time, in case the notice period is preserved by submitting notice of the defects. If our performance has any defects in quality or any manufacturer defects, we will remedy the defect in due time, if we violate culpably a cardinal obligation or essential contract obligation, [in which case the liability is limited to the foreseeable, typically occurring damages], or we can be made responsible for injury to the health or body of the customer. If the data of a third party is included within the protective scope of this contract, or the damage is covered by a liability, fire, storm or theft insurance policy concluded by us and provided that an insurance policy is not in fact concluded by the purchaser or such policy being concluded is completely customary and reasonable, the claim is based on impos- sibility or delay for which we are responsible [if there is no intentional contract violation, then our liability is limited to the foreseeable, typical- ly occurring damages], or the claim is based on the compulsory provi- sions of the Product Liability Act [Produkthaftungsgesetz]. The liability for any other damages is excluded.

6 SHIPPING

Shipping shall always take place at the expense and risk of the custom- er. If the shipment is delayed for reasons for which the customer is responsible, the risk is assumed by the customer upon notification of pending dispatch.

II SPECIFIC SERVICES OF a+s IntelliData GmbH

1 Comparison with data sets of third party companies

1.1 For comparison with the data sets of third party companies, customer [service partner and the end customer] shall accept the re- spective general terms and conditions or contractual provisions. They can be viewed on the home pages of the respective third party com- panies. The Internet addresses are listed in the following supplemental conditions. If it is not possible to retrieve these GTCs, customer must submit brief notification to a+s in writing or electronically, a+s shall then promptly deliver these conditions.

1.2 a+s has a right to termination for cause without observing the notice period for all contracts related to third party data if the respective third party company – for any reason whatsoever – does not process the order, and if, due to significant changes to the purchase conditions by the third party company, the respective contract with a+s can no longer be performed feasibly under the agreed conditions, a+s is equa- lly entitled to termination for cause without observing a notice period if performing the third party services is impeded, or is no longer possible, due to statutory changes. For such cases, claims for damages against a+s are excluded.

3 Supplemental conditions for the services: requestcheck (POSTADRESS MOVE), deceased records check, and deliverability check (POSTADRESS CLEAN)

3.1 The end customer and a service partner of a+s authorises the service partner, within the scope of address management measures that are the subject matter of the contract (post address services), to contact address management for the contracted data. The Internet addresses are listed in the following supplemental conditions. The service partner and the end customer for the correctness and completeness of the moversPLUS address information, in particular, for the new addresses being relocation addresses.

3.2 In this respect, the end customer accepts the GTC of Deutsche Post Address GmbH & Co. KG, Am Anger 33, 33323 Gütersloh. The end customer shall thus become the direct contract partner of Post Address.

4.3 In this respect, the end customer accepts the GTC of Deutsche Post Address GmbH & Co. KG for the data comparison of its own data- bases with the relocation database [POSTADRESS MOVE] and/or for the GTC for the data comparison of leased address data sets with the Post Address relocation database [POSTADRESS MOVE]. In particular, the end customer accepts the limitations on use, which are protected by con- tractual penalty, with respect to the transferred data. Post Address is entitled to evaluate compliance with the conditions of use or to com- mission a representative of the consulting professions (lawyer, tax consultant, auditor) who is obliged to observe confidentiality to evalu- ate compliance with the conditions of use.

3.3 The applicable GTC of Deutsche Post Address GmbH & Co. KG can be retrieved at www.postadressglobal.com/de-de/agb/.

3.4 The service provider or end customer must give acceptance of all addresses in the address change information and the postCLEANplus data. A selection or return of addresses is not possible.

4.4 The customer guarantees, with respect to the personal use of moversPLUS, having a justified interest in knowing about new addresses, that given customer requests the data within the scope of a contractual relationship or a contract-similar relationship of trust [e.g. a relationship with a customer/interested party] with the occupant of the address requested, for collection activities or enforcing civil law claims, which is not in dispute, is not in dispute.

3.5 a+s assumes no liability for violations of copyright, licensing or data protection law on the part of the service provider or the end customer in the use of moversPLUS.

4.5 Otherwise, the regulations under Section I item 4 of these contract provisions shall apply.

II SPECIFIC SERVICES OF a+s IntelliData GmbH

1 Comparison with data sets of third party companies

1.1 For comparison with the data sets of third party companies, customer [service partner and the end customer] shall accept the re- spective general terms and conditions or contractual provisions. They can be viewed on the home pages of the respective third party com-panies. The Internet addresses are listed in the following supplemental conditions. If it is not possible to retrieve these GTCs, customer must submit brief notification to a+s in writing or electronically, a+s shall then promptly deliver these conditions.

1.2 a+s has a right to termination for cause without observing the notice period for all contracts related to third party data if the respective third party company – for any reason whatsoever – does not process the order, and if, due to significant changes to the purchase conditions by the third party company, the respective contract with a+s can no longer be performed feasibly under the agreed conditions, a+s is equa- lly entitled to termination for cause without observing a notice period if performing the third party services is impeded, or is no longer possible, due to statutory changes.

2 Third party costs and services, cases of termination for cause

2.1 a+s may outsource third party services on the basis of an agree- ment with the principal on the principal’s behalf and on the principal’s account.

2.2 a+s may outsource to third parties on the principal’s request, customer shall indemnify a+s for any incurred liability. If the third party costs change subsequently to concluding the contract, a+s reserves the right to adjust the price in coordination with customer.
7.2 Obligation and liability of the user

7.2.1 The user is obligated to properly use the a+s online address services. The user is in particular obligated to:
- allow a+s to install technical equipment if and insofar as this is required for the use of the a+s online address services, and the installation is not undertaken by the user,
- communicate to a+s which technical equipment is used for participating in the online address services,
- not improperly use the access capabilities to a+s online address services, and to refrain from illegal acts,
- take account of the principles of data processing and data protection, and in particular, maintain the secrecy of passwords or immediately change or have the passwords changed if the suspicion exists that non-authorized third parties have acquired knowledge of the passwords,
- promptly provide written notice to a+s of recognizable defects or damages (error report),
- undertake all measures within reasonable limits that allow for a determination of the defects or damages and their causes, or that facilitate access to the online address services of third parties,
- reimburse a+s for all expenses accruing by virtue of evaluating their facilities after submitting the error report, insofar as it is established subsequently to the evaluation that the malfunction was within the user's scope of responsibility,
- not apply or otherwise use any equipment, software, or other data that could result in changes in the physical or logical structure of the online address services,
- evaluate online address services for problem-free functioning by means of the user's own records or sampling. Any irregularities must be promptly communicated to a+s in written form. No compensatory damage claims of any kind, also in the case of irregularities in program execution, can be derived.

7.2.2 The user shall be liable for all consequences and detriments that arise for a+s and third parties due to the illegal use of the a+s online address services or as a result of user not complying with user's other obligations.

7.3 Blocking the user

7.3.1 In the case of the user’s delay in payment, a+s is entitled to block the access to the a+s online address services. In this case, the user remains obligated to pay the monthly fees.

7.3.2 a+s shall similarly block access if the user has given cause for a termination of this contractual relationship without notice,
- despite a warning, violates essential contractual provisions, impairs the quality of the service or disrupts the function of the service through a culpable action or omission, so that a+s would also alternatively be entitled to a termination for cause.

7.4 Termination for cause by a+s

7.4.1 a+s is authorized to terminate the contractual relationship without observing a notice period if:
- the user violates the obligations mentioned under item 7.2,
- the user is in default for two consecutive months with paying the fees or not immaterial part of the fees, or in a time period extending over more than two months, or with the payment of fees amounting to a sum that reaches the monthly basic fee for two months,
- if essential software licenses to a+s software or rights of use for third party data that is required for the operational use of the services expire – irrespective of the reason. This termination shall not create the basis for any additional user claims. a+s retains the right to assert additional claims due to a delay in payment.

7.4.2 Errors in data processing for which a+s or a vicarious agent of a+s is at fault shall be remedied, insofar as possible, by a+s free of charge. If a correction is not possible, compensatory damage claims against a+s (including its vicarious agents) require that there are intentional actions or gross negligence by a part of a+s.

7.4.3 a+s shall be liable for simple negligence if a+s violates essential contract obligations. Compensatory damage claims are in any case limited to the amount of the fee for the online address services.

7.5 Payment terms

7.5.1 For a+s OnlineCheck, a+s shall generate a monthly invoice concerning the basic flat fee in addition to the fees and the value added tax.

7.5.2 Complaints concerning invoices must be raised in writing within a period of 14 days beginning with the day of the invoice or the next working day. Any complaints not met within this period lose their validity.

7.6 Contract term

7.6.1 The contract commences with the signature of the user under the offer or the a+s OnlineCheck order form and is concluded initially for a term of one year. It can be terminated by both parties in writing by registered letter with a notice period of three months prior to the 90th day of a minimum contract term (1 year). If the contract is not terminated or not timely terminated, the term is extended by a respective additional year. We reserve the right to modify the catalogue prices of the services. The above conditions for the order confirmation or the a+s OnlineCheck order form shall apply. 7.6.2 In the case of a violation of essential contractual provisions by one of the parties to the contract, the other contractual partner can demand fulfillment of the contract within a reasonable grace period by means of a registered letter. If the request is unsuccessful, the contract can be terminated after expiration of the grace period, without observing an additional notice period, provided that a termination was previously threatened in written form.

8 Other regulations

8.1 Payment terms

8.1.1 The delivery and performance of the services are performed to the extent of the agreed amount. Any additional work done to the agreed amount is charged for separately. Any additional work ordered by the user is charged for separately. The user shall remit a sum that reaches the monthly basic fee for two months to a+s in the event of default with payments of fees or a not immaterial part of the fees, or in a time period extending over more than two months.

8.1.2 The user shall be liable for all consequences and detriments that arise for a+s and third parties due to the illegal use of the a+s online address services or as a result of user not complying with user's other obligations.

8.1.3 a+s shall similarly block access if the user has given cause for a termination of this contractual relationship without notice,
- despite a warning, violates essential contractual provisions, impairs the quality of the service or disrupts the function of the service through a culpable action or omission, so that a+s would also alternatively be entitled to a termination for cause.

8.1.4 Termination for cause by a+s

8.1.4.1 a+s is authorized to terminate the contractual relationship without observing a notice period if:
- the user violates the obligations mentioned under item 7.2,
- the user is in default for two consecutive months with paying the fees or not immaterial part of the fees, or in a time period extending over more than two months, or with the payment of fees amounting to a sum that reaches the monthly basic fee for two months,
- if essential software licenses to a+s software or rights of use for third party data that is required for the operational use of the services expire – irrespective of the reason. This termination shall not create the basis for any additional user claims. a+s retains the right to assert additional claims due to a delay in payment.

8.1.4.2 Errors in data processing for which a+s or a vicarious agent of a+s is at fault shall be remedied, insofar as possible, by a+s free of charge. If a correction is not possible, compensatory damage claims against a+s (including its vicarious agents) require that there are intentional actions or gross negligence by a part of a+s.

8.1.4.3 a+s shall be liable for simple negligence if a+s violates essential contract obligations. Compensatory damage claims are in any case limited to the amount of the fee for the online address services.

9 Other regulations

9.1 Payment terms

9.1.1 The delivery and performance of the services are performed to the extent of the agreed amount. Any additional work done to the agreed amount is charged for separately. Any additional work ordered by the user is charged for separately. The user shall remit a sum that reaches the monthly basic fee for two months to a+s in the event of default with payments of fees or a not immaterial part of the fees, or in a time period extending over more than two months.