

General Terms and Conditions (GTC) of SPITEX BERN and its affiliated companies, and companies that provide services on their behalf (hereinafter referred to as SPITEX BERN)

Version dated 18 October 2023

1. Basic information

The contractual relationship between SPITEX BERN and its customers is determined by

- the individual service agreements including enclosures ("Service agreement for KVG services" and/or "Service agreement for 'Comfort' and 'Extra' services, as well as housekeeping and social care services" based on a needs assessment,
- the General Terms and Conditions,
- information on data protection for customers of SPITEX BERN, and
- information for our customers,

which are expressly recognised by the customer as an integral part of the contractual relationship. These General Terms and Conditions govern the relationship between SPITEX BERN and its customers in general. As part of the service agreements with the Canton of Bern, SPITEX BERN provides paid services in the area of outpatient care and assistance for the residents of the municipality of Bern and other municipalities. Insofar as the individual agreements and the General Terms and Conditions do not expressly provide otherwise, the provisions of the Swiss Code of Obligations on contracts (Art. 394 et seq. CO) shall apply mutatis mutandis.

2. Objective

SPITEX BERN supports customers and those close to them with nursing, assistance and other services with the aim of enabling them to live independently and with dignity at home. In doing so, SPITEX BERN takes into account the customer's own resources and those of those close to them. Support is provided in line with the principle of "helping people to help themselves."

3. Scope of services

The scope of services in relation to benefits as per health insurance legislation (KVG) is determined by means of a needs assessment, and recorded on a needs assessment form for the attention of the health insurance company and in the service agreement for the customer. The scope of "Comfort" and "Extra" services, as well as housekeeping and social care services, is also determined in a needs assessment and recorded in the corresponding service agreement for the customer.

4. Service

4.1 Needs assessment

During the initial visit, a comprehensive assessment of the overall situation and individual care and assistance needs is carried out together with the customer and/or their representative and in consultation with the physician, and the necessary measures are planned on a joint basis. The result is recorded in writing and sent to the physician as a needs assessment form to order the services covered by mandatory health insurance. The physician's instructions are updated periodically or as required in accordance with legal requirements. The instructions are updated both in the case of ongoing care and assistance needs and if benefits are increased. The health insurance company generally has 14 days to object to the physician's instructions. SPITEX BERN and the customer shall inform each other immediately if the health insurance company objects to the services. A separate service agreement is concluded for the disputed element and for all other non-insured services that are expressly requested by the customer and are not subject to tariff protection. SPITEX BERN issues a separate invoice for these services, which are considered "Comfort" and "Extra" services and are charged in full to the customer.

4.2 Service agreements

The scope of KVG benefits is defined in the "Service agreement for KVG services". The "Service agreement for 'Comfort' and 'Extra' services, as well as housekeeping and social care services" governs the services that are not subject to mandatory health insurance. This includes services that are requested by the customer but are not reimbursed by the health insurance company and are not covered by tariff protection. The costs are to be paid by the customer, and will be invoiced separately by SPITEX BERN. If the additional need for services in the context of KVG benefits exceeds the scope of services specified in the service agreement, a new service agreement must be signed. In the context of "Comfort" and "Extra" services, as well as housekeeping and social care services, the scope of services in accordance with the service agreement may, if necessary, be exceeded by a maximum of 20% of the total number of hours without informing the customer (or their legal representative) in advance, and without amending the service agreement. If the scope of services is exceeded by more than 20%, a new service agreement must also be signed for these services.

4.3 Electronic customer documentation

The electronic customer documentation records the customer's health situation and all nursing, assistance or other measures, including medical prescriptions and any changes made over time. The customer agrees that photographs may be taken to document the progress of any wounds. The images taken will not be used for commercial purposes. The electronic data is managed and archived in a protected SPITEX BERN database. Upon written request, customers are given access to their customer documentation and can request that it be released.

4.4 Service provision

Services are provided 24 hours a day. The start time of the visit is subject to a tolerance of +/- 20 minutes, and customers must be present during the visit as a rule. Customers are not entitled to request specific members of staff. Visits that are not cancelled by the customer at least 24 hours in advance from Monday to Friday and at least 48 hours in advance for weekends and public holidays will be charged. This does not apply to cancellations due to emergency hospitalisation or death.

4.5 Visits involving more than one member of SPITEX BERN staff and third-party organisations

If a visit requires more than one member of staff for specific reasons, e.g. for instruction relating to care or assistance, the working hours of both members of staff will be invoiced. SPITEX BERN is also a training organisation – if apprentices/students are accompanied on customer visits, only the working hours of one member of staff will be invoiced. All services are provided by SPITEX BERN's own staff as a rule. Should certain operational circumstances require, we reserve the right to use suitably qualified staff from third-party organisations.

4.6 Compliance by the customer

Customer visits can only be made effectively if both the customer and the SPITEX BERN staff help to make this possible. The customer agrees to the use of the commonly used care materials and will, if necessary, take measures to prepare their home appropriately for the visits. Particular emphasis is placed on the use of assistive equipment that is needed to protect the health of the customer and staff (e.g. adapted bed, non-slip surfaces, hygienic conditions that allow for appropriate care, etc.).

4.7 Access management

The customer is responsible for ensuring that SPITEX BERN staff have access to their home. If the customer is unable to open the door to their home independently, a key safe, badge or similar can be installed. SPITEX BERN works together with Spides GmbH, Safety-Systems Schweiz, in the area of access management. By signing the consent form, the customer authorises SPITEX BERN to pass on their details to Spides GmbH. Consulting and installation of a key safe and similar services are subject to a charge for the customer and will be invoiced directly by Spides GmbH. The customer can also deposit a key to their home (at least one) at the SPITEX BERN location for a fee. Handover of keys and key safe codes to SPITEX BERN or programming of the Airkey badge must be confirmed in writing. SPITEX BERN is responsible for the careful and secure storage of the keys, the key safe code or the badge at the location. SPITEX BERN accepts no liability if, contrary to its recommendation, the key is deposited by the customer in an inappropriate manner (i.e. not using a key safe or similar), or the code of the key safe is disclosed.

4.8 Emergency access

If SPITEX BERN staff find the front door locked on a scheduled visit and have no other means of access (see Section 4.7), SPITEX BERN is authorised to have the front door opened by professionals if there is a suspicion that the customer may be in danger. The cost of opening the door will be borne by the customer. This does not apply to cases in which relatives are able to open the door within a reasonable period of time.

5. Limits to services

5.1 Care services

The scope of services is generally agreed as part of the needs assessment and the individual service plan. Service provision can only begin or continue to the extent that the customer's state of health allows in view of the general framework conditions applicable to the work of SPITEX BERN. SPITEX BERN will inform the customer as promptly as possible if provision of care or assistance is no longer feasible at home for technical or other reasons, if there is a health risk or if admission to an inpatient care institution becomes necessary. SPITEX BERN can help to arrange a suitable solution in such an event.

5.2 Housekeeping and social care services

SPITEX BERN staff are only authorised to carry out the tasks agreed between the customer and SPITEX BERN. Housekeeping and social care services are subordinate to care service planning.

6. Care materials and assistive equipment

6.1 Purchase and maintenance of assistive equipment

In order for SPITEX BERN to be able to provide the necessary care, the customer must agree to:

- hire or purchase the necessary equipment or make adjustments to their living environment;
- have maintenance measures carried out by qualified specialists in accordance with the manufacturer's instructions and provide evidence of this if required.

6.2 Care materials and assistive equipment from the MiGeL list

Care materials and assistive equipment from the MiGeL list of equipment and articles are covered by health insurance up to a maximum reimbursement amount defined by the federal government. The material can be dispensed by SPITEX BERN if a doctor's prescription is available.

6.3 Ordering care materials and assistive equipment from the Spitex range

SPITEX BERN offers its customers the opportunity to purchase selected commonly used care materials and assistive equipment that are not covered by health insurance from SPITEX BERN directly. A member of staff at SPITEX BERN will talk to the customer about the need for materials in their home and take an order.

6.4 Ordering and delivery of care materials and assistive equipment from external providers

SPITEX BERN also offers its customers the possibility of purchasing selected commonly used care materials and assistive equipment that are not covered by health insurance from SPITEX BERN directly (assistive equipment for everyday life, care products, etc.). A member of staff at SPITEX BERN will talk to the customer about the need for materials in their home and take an order. The customer will receive a written confirmation for orders worth more than CHF 100. The care materials and assistive equipment purchased are delivered directly to the customer's home, usually by partners of SPITEX BERN. The customer acknowledges that SPITEX BERN is not the manufacturer of the care materials and assistive equipment but procures them from its partners.

6.5 Range of available products

Changes to the product range made by partners of SPITEX BERN are beyond the control of SPITEX BERN. The customer acknowledges that SPITEX BERN offers no guarantee of the availability of care materials and assistive equipment.

6.6 Prices and invoicing

Costs for care materials that are not considered consumables ("Comfort" materials) and are not covered by health insurance will be charged in full to the customer. SPITEX BERN staff can provide details of the prices of the materials.

6.7 Warranty and disclaimer

The customer is required to check the care materials and assistive equipment immediately upon receipt. Any complaints must be reported to SPITEX BERN immediately. Statutory warranty obligations apply with regard to any defects in the purchased item. Any warranties are based on the manufacturer's warranty obligations of partners of SPITEX BERN, if such exist. SPITEX BERN is not the manufacturer and is not liable for direct or indirect damage if a faulty product leads to personal injury or to the damage or destruction of an object. SPITEX BERN is in no case liable for damage and consequential damage caused by improper use of the purchased item by the customer, or by the customer's disregard of the manufacturer's warnings.

6.8 Storage of medicines on site

If the customer's own medication is stored at a SPITEX BERN location, the customer agrees that expired or unused medication will be disposed of properly.

7. Costs, assumption of costs and invoicing

Healthcare and nursing services subject to mandatory health insurance are invoiced by SPITEX BERN directly to the health insurance company and reimbursed by the latter ("tier payant" system), unless the "tier garant" system has been expressly agreed between the service provider and the insurer, in which case the services covered by mandatory health insurance are invoiced to and paid by the customer in accordance with the applicable tariff. All other care and assistance services expressly requested by the customer ("Comfort" and "Extra" services, as well as housekeeping and social care services) will be invoiced to and paid for by the customer in accordance with the applicable tariff. The same applies to services that are refused by the health insurance company for good reason but are expressly requested by the customer. Section 6.3 et seq. applies to care materials and assistive equipment that are not covered by health insurance.

7.1 Recording of services

SPITEX BERN staff record their work in the form of an electronic service log as a basis for invoicing.

7.2 Payment

The payment terms in the "tier payant" system are based on the administrative agreement between the Spitex and health insurance companies. If the invoice is to be paid by the customer, SPITEX BERN will send the invoice for services (including any additional requirements in accordance with Sec-

tion 4.2 in terms of "Comfort" and "Extra" services) provided during the previous month in the second half of the month at the latest. The invoice must be paid within 30 days, irrespective of whether a third party is obliged to pay (e.g. health insurance, supplementary benefits, welfare benefits). In the event of repeated payment default, SPITEX BERN shall be entitled, after clarifying the circumstances involved, to demand advance payment or appropriate assurances for the provision of further services.

8. Termination

8.1 Ordinary notice period

The service agreement can be cancelled unilaterally at any time with at least five days' written notice. The date of posting or delivery of the written notice of cancellation to SPITEX BERN staff will be the date that applies. Terminations must be addressed to customer services at SPITEX BERN. The service agreement is automatically cancelled at the agreed end of the assignment.

8.2 Immediate cancellation of the service agreement

In special cases, SPITEX BERN has the option of cancelling the service agreement with immediate effect:

1. in the event of non-payment of invoices after the second reminder notice
2. in the event of inappropriate interference in the provision of services by the customer's relatives or other carers
3. if the customer's circumstances make the provision of services unreasonable for SPITEX BERN staff (in particular if the customer is prone to violence, neglected or unhygienic living conditions, lack of assistive equipment or similar cases).

8.4 Further grounds for termination

The service agreement ends without cancellation if the customer enters an inpatient care establishment or dies.

9. Confidentiality and data protection

SPITEX BERN obliges its staff to observe and comply with the duty of confidentiality and the applicable data protection regulations. All information is treated confidentially. Insofar as it is necessary for the fulfilment of the contract and the statutory duties of the Spitex organisation, a customer's personal data may be stored or transmitted to third parties, in particular to health insurers, physicians, retirement and care institutions, inspection and arbitration bodies, state authorities and supervisory authorities. The customer expressly agrees to this use of their data. In particular, they also consent to the processing of the data collected during the needs assessment (InterRAI data) in pseudonymised form (name not identifiable) in the HomeCare Data system. The applicable data protection laws are observed when handling this data. The customer releases the attending physician from the duty of confidentiality vis-à-vis SPITEX BERN. The customer acknowledges that in certain cases SPITEX BERN is subject to a duty to report, or has a right to report (e.g. in the event of unusual deaths, certain communicable diseases, danger to self or others). SPITEX BERN is obliged to store customer data for 20 years, after which time the data is then deleted. Storage can be waived with the consent of the customer. The customer is not permitted to film or make other visual or sound recordings of SPITEX BERN staff while they are providing care services or housekeeping or social care services. If there are cameras at the customer's home, these must be switched off during the visit. The use of recording devices during a visit by SPITEX BERN staff is justification for cancelling the visit.

10. Liability

SPITEX BERN shall be liable for damage to furniture at the customer's home caused intentionally or through gross negligence by staff and which is not attributable to material wear and tear. The extent of liability is determined by the current value of the damaged item. No further liability is accepted for example for physical damage caused by accidents in the public or private domain that were not caused by SPITEX BERN staff.

11. No performance of additional work by staff

SPITEX BERN staff are not permitted to agree services with the customer that go beyond the official assignment. This also applies for six months following termination of the employment relationship. SPITEX BERN staff are prohibited from transporting customers or their relatives in SPITEX BERN vehicles, in their own private cars or those belonging to the customer or third parties.

12. Gifts to staff

SPITEX BERN staff are prohibited from accepting money or other gifts or legacies from customers or their relatives, insofar as these extend beyond small signs of appreciation. Any further contributions can be made in the form of donations to the staff fund.

13. Complaints

SPITEX BERN has a system for receiving, processing and recording complaints. As a rule, all SPITEX BERN staff are obliged to accept complaints from customers and relatives and to pass them on to the party responsible. If the complaint cannot be resolved to the satisfaction of both parties, the following procedure will be applied:

1. The parties contact the Head of Care at SPITEX BERN with a request for case settlement.
2. If no agreement can be reached, the parties contact the management of SPITEX BERN.
3. If no agreement can be reached, the parties are authorised to appeal to the Board of Directors, which will undertake to settle the dispute amicably.

14. Place of jurisdiction

The place of jurisdiction for all legal disputes arising from the contract between SPITEX BERN and the customer is Bern in all cases.