

General Terms and Conditions of Business of SPITEX BERN, its affiliated companies and companies performing services on its behalf (hereinafter referred to as "SPITEX BERN")

Version dated 12 January 2022

1. Basic principles

The contractual relationship between SPITEX BERN and its clients is determined

1. by the individual performance agreements (including annexes) in accordance with the form entitled "Performance agreement for services covered by statutory health insurance" based on a needs analysis and/or the form entitled "Performance agreement for premium and add-on services as well as domestic and welfare assistance services";
2. by the General Terms and Conditions of Business, which the client expressly acknowledges as an integral part of the contractual relationship. These General Terms and Conditions of Business govern the relationship between SPITEX BERN and its clients on an overarching level. Within the framework of the performance agreements, SPITEX BERN provides outpatient care and assistance services in exchange for a fee on behalf of residents of the municipality of Bern and other municipalities. Unless explicitly specified otherwise in the individual agreements and General Terms and Conditions of Business, the provisions of the Swiss Code of Obligations governing the agency contract (Art. 394 et seq. CO) apply mutatis mutandis.

2. Objective

SPITEX BERN supports clients and those close to them with care, assistance and other services with the aim of enabling them to live an independent and dignified life in their own home. In the process, SPITEX BERN takes account of the client's own resources and those of the people close to them. Support is provided following the principle of "helping people to help themselves".

3. Scope of service provision

With regard to services covered by statutory health insurance, the scope of the services provided is determined by means of a needs analysis and recorded on the needs report form for the benefit of the health insurer and in the performance agreement for the benefit of the client.

The scope of premium and add-on services and of domestic and welfare assistance services is recorded in the corresponding performance agreements.

4. Service

4.1 Needs analysis

When the service is to be used for the first time, an extensive analysis of the overall situation and the client's individual care and assistance needs is carried out together with them and/or their representative and in consultation with their doctor, and the necessary measures are planned in a collaborative process.

The outcome is documented in writing and communicated to the doctor on the needs report form so that they can prescribe the services covered by health insurance.

This prescription by the doctor is to be updated periodically in accordance with the statutory provisions. Prescriptions are to be updated both in the case of an ongoing need for care and assistance and if the scope of service provision increases. As a basic principle, the health insurer will have 14 days to raise an objection to the prescription by the doctor. SPITEX BERN and the client will notify each other without delay if the health insurer objects to any services. In this case, a separate performance agreement will be concluded for those services being objected to and for all other services not covered by health insurance that the client expressly requests. SPITEX BERN will draw up a separate invoice for these services. These services shall be deemed premium and add-on services and shall be paid for in full by the client.

4.2 Performance agreements

The scope of services covered by statutory health insurance is determined in the "Performance agreement for services covered by statutory health insurance". The services not covered by health insurance are governed by the performance agreement entitled "Premium and add-on services as well as domestic and welfare assistance services". These include services that the client is requesting but whose costs the health insurer will not cover and that are not subject to tariff protection. The associated costs are to be borne by the client and will be charged separately by SPITEX BERN. If the scope of extra services covered by statutory health insurance that are required exceeds the scope of services specified in the performance agreement, a new performance agreement will need to be concluded. With regard to premium and add-on services as well as domestic and welfare assistance services, the scope of services in accordance with the performance agreement can, if necessary, be exceeded by up to 20% of the total number of hours without first notifying the client (or their legal representative) and without amending the performance agreement; if the increase exceeds 20%, a new performance agreement will have to be signed in this case too.

4.3 Electronic care file

The electronic care file records the client's health situation and all care, assistance and other measures, including doctors' prescriptions and current changes. The electronic data is managed and archived in a secure SPITEX BERN database. Clients are able to view their care file after submitting a written request.

The client agrees to photographs being taken in order to document the progression of any wounds. Such photographs will not be used for commercial purposes.

4.4 Provision of services

Services are provided around the clock. A tolerance period of +/- 20 minutes applies to the start of visit times. Although we endeavour to maintain continuity in care, the client has no entitlement to be looked after by specific members of staff. Visits that the client does not cancel at least 24 hours in advance on Monday to Friday or at least 48 hours in advance at weekends or on bank holidays will be charged for. Exceptions apply in the event of admission to hospital or death.

4.5 Use of multiple staff and third-party organisations

If particular circumstances, such as an introduction to care or assistance measures, require two staff to be deployed at the same time, the working time of both staff will be charged for. As a rule, all services are covered by SPITEX BERN's own staff. We reserve the right to use suitably qualified staff from third-party organisations in the event of specific operational circumstances.

4.6 Cooperation by the client

An unimpeded, professional service can only be provided if the client and the SPITEX BERN staff help to achieve this. The client agrees to the use of standard care supplies and will, if necessary, adapt their home in line with the action that needs to be taken. The use of aids that are essential to protect the health of the client and staff (e.g. nursing bed, non-slip pads, hygienic conditions that permit appropriate care, but also suitable cleaning materials, etc.) is deemed to be particularly important.

4.7 Access management

The client is responsible for ensuring that SPITEX BERN staff can access their home. They can open doors themselves or arrange for a secure access method to be installed (key safe, badge, etc.). SPITEX BERN works together with Spides GmbH, Safety-Systems Schweiz in the area of access management. SPITEX BERN can pass the client's details on to Spides GmbH at their request. The costs of a consultation and installation are to be borne by the client and will be charged to them by Spides GmbH directly. In exceptional cases, the client can leave keys to their home (at least three) at SPITEX BERN's premises on payment of a fee. The handover of keys and key safe codes and the programming of the Airkey badge must be acknowledged in writing. SPITEX BERN is responsible for the careful safekeeping of keys, key safe codes and badges. SPITEX BERN accepts no liability whatsoever if the client stores their key in an unprofessional way against the recommendation of SPITEX BERN or shares the code to their key safe with someone else.

4.8 Forced entry into the home

If SPITEX BERN staff arriving for a scheduled visit find the door to the client's home locked and SPITEX BERN has not been provided with any means of gaining entry (cf. point 4.7), SPITEX BERN will be authorised to task specialists with opening the doors to the home if there is the suspicion that something might have happened to the client. The cost of forcing the doors open is to be borne by the client. This does not apply to situations where family or friends are able to open the doors to the home within a reasonable period of time.

5. Limitations on services

5.1 Care services

Services can only be provided or maintained for as long as the client's health permits in view of the general framework conditions of a Spitex activity (providing assistance and care at home). SPITEX BERN will notify the client as soon as possible if it is no longer feasible to care for or assist them at home for technical or other reasons, if their health is at risk or if they are likely to have to enter inpatient care. SPITEX BERN can help to find a suitable solution.

5.2 Domestic and welfare assistance services

The planning of care services takes priority over domestic and welfare assistance services.

6. Protective measures in the event of needlestick and sharps injuries

The client agrees to the necessary action being taken if SPITEX BERN staff suffer a needlestick or sharps injury involving blood or other potentially infectious bodily fluids while caring for them. Action required immediately involving the client may include obtaining health data from the doctor treating them and taking blood for an HIV and/or hepatitis test.

7. Care supplies and aids

7.1 Obtaining and maintaining care aids

So that SPITEX BERN can provide care that is appropriate to the client's needs, the client agrees:

- to hire or purchase the aids required for this purpose and/or make modifications in their living environment;
- to arrange for qualified specialists to carry out maintenance in accordance with the manufacturers' specifications and demonstrate proof of this if required.

7.2 Care supplies and aids on the MiGeL list

The cost of care supplies and aids on the MiGeL list (list of medical supplies and devices) will be covered by health insurance up to a maximum amount ("HVB Pflege") set by the Swiss government. SPITEX BERN can provide the supplies if a doctor's prescription has been presented.

7.3 Ordering care supplies and aids from the Spitem range
SPITEX BERN offers its clients the opportunity to purchase a range of standard care supplies and aids from it whose costs will not be covered by their health insurance. SPITEX BERN staff will visit the client in their home, discuss what supplies they need and take their order.

7.4 Orders and deliveries of care supplies and aids from other providers

SPITEX BERN also offers its clients the opportunity to purchase a range of standard care supplies and aids from it (aids for everyday life, care products, etc.) whose costs will likewise not be reimbursed by their health insurance. SPITEX BERN staff will visit the client in their home, discuss what supplies they need and take their order. Orders will be forwarded electronically. The client will receive written confirmation of orders worth over CHF 100. The care supplies and aids ordered will be delivered to the client's home directly, usually by partners of SPITEX BERN. The client acknowledges that, rather than manufacturing the care supplies and aids itself, SPITEX BERN merely obtains them from partners.

7.5 Range

SPITEX BERN cannot exert any influence on changes to its partners' ranges. The client acknowledges that SPITEX BERN does not provide any guarantee of the availability of care supplies and aids.

7.6 Prices and invoicing

The cost of care supplies not classed as consumables (premium supplies) will not be reimbursed by the client's health insurance and will be charged to them in full. SPITEX BERN staff will provide information on the sales prices of the supplies.

7.7 Warranty and disclaimer

The client is required to check the care supplies and aids as soon as they receive them. Any complaints must be raised with SPITEX BERN immediately. The statutory warranty obligations apply in respect of defects affecting items purchased. Any services provided under warranty shall be based on the manufacturers' warranty obligations of SPITEX BERN's partners insofar as any exist.

SPITEX BERN is not the manufacturer and is liable for neither direct nor indirect damage or loss if a faulty product causes injury or the destruction of or damage to property. Under no circumstances will SPITEX BERN be liable for damage or loss, including consequential damage or loss, that is caused by improper use of the purchased product by the client or by their failure to heed the manufacturer's warnings.

8. Prices and invoicing

The costs of assistance, premium and add-on services are to be settled by the client in accordance with the applicable tariff as a basic principle. The costs of health and nursing care services covered by statutory health insurance will be paid to SPITEX BERN by the health insurer directly (Tiers payant system) unless the service provider and the health insurer have expressly agreed to use the Tiers garant system, in which case the client will be required to pay for the costs covered by statutory health insurance themselves in accordance with the applicable tariff. All other care and assistance services expressly requested by the client (premium and add-on services as well as domestic and welfare support services) are to be paid for by the client in accordance with the applicable tariff. Point 7.2 et seq. applies to care supplies and aids whose costs are not covered by the client's health insurance.

8.1 Logging services provided

Staff record the work they have carried out in a log of services provided in order to serve as a basis for invoicing. This is done electronically. Any complaints are to be sent to the SPITEX BERN management.

8.2 Invoicing

Under the Tiers payant system (standard practice), nursing and care services (services covered by statutory health insurance) are invoiced to the health insurer directly, which covers the costs. Under the Tiers garant system (exception), the costs are invoiced to and paid by the client.

Premium and add-on services as well as domestic and welfare assistance services are not covered by health insurance and are always charged to the client directly. The same applies to care supplies and aids in accordance with points 7.3 and 7.4. The costs of nursing and care services that the health insurer is justifiably refusing to cover but that are expressly requested by the client will be charged to and paid for by the client as a premium or add-on service.

8.3 Payment

Under the Tiers payant system, the payment options are determined by the administrative agreement between Spitem and health insurance associations. Insofar as the client is required to pay an invoice, SPITEX BERN shall provide its invoice for services rendered in the previous month (including any extra requirement for premium and add-on services in accordance with point 4.2) in the second half of the current month at the latest. The invoice must be settled within 30 days, regardless of whether a third party (e.g. health insurer, supplementary benefits, welfare benefits) is obliged to cover the costs. In the event of repeated default on payment, SPITEX BERN will be entitled, after clarifying the

circumstances, to demand advance payment or appropriate security for the provision of further services.

9. Termination

9.1 Notice period for ordinary termination

The performance agreement can be terminated unilaterally at any time with at least five days' notice. This shall be determined based on the postmark on or, as appropriate, the handover of the written notice of termination to a member of SPITEX BERN staff. The performance agreement will be terminated automatically at the agreed end of the deployment.

9.2 Immediate termination of the performance agreement

SPITEX BERN may terminate the performance agreement immediately in specific cases, including:

1. if invoices remain unpaid after sending two reminders;
2. if the family and friends of the client or other people close to them interfere inappropriately in the work being done to provide the service;
3. if circumstances involving the client or at their premises make it unreasonable to expect SPITEX BERN staff to provide services (specifically if the client exhibits a latent tendency to violence, squalid or unhygienic living conditions, lack of aids or similar scenarios).

9.3 Form

Notice of termination of the performance agreement must be given in writing. A notice of termination from the client is to be addressed to SPITEX BERN management.

9.4 Other reasons for the agreement coming to an end

The performance agreement will come to an end without needing to be terminated if the client enters inpatient care or dies.

10. Duty of confidentiality and data protection

SPITEX BERN requires its staff to observe and comply with their duty of confidentiality and the applicable data protection regulations. Insofar as required to implement the contract, the client's personal data may be stored or passed on to third parties, particularly to health insurers, doctors, retirement and care homes, monitoring and arbitration bodies, government agencies and supervisory authorities as well as companies and suppliers that are affiliated with SPITEX BERN or that perform services on its behalf. The client gives their explicit consent to this use of their data.

The applicable data protection regulations will be observed when handling this data. The client releases the doctors treating them from their obligation to maintain confidentiality vis-à-vis SPITEX BERN.

Monitoring SPITEX BERN employees by video or other media during their visit to the client's home is not permitted for reasons of data protection and professional secrecy.

11. Liability

SPITEX BERN shall be liable for damage to furniture inside the client's home that is caused by intent or gross negligence on the part of its staff and that is not due to age-related material fatigue or wear and tear. The scope of liability shall be determined based on the current value of the object damaged. Any further liability, e.g. for injury resulting from accidents sustained in a public or non-public place that were not caused by SPITEX BERN, is excluded.

12. Ban on staff accepting extra work

SPITEX BERN staff are not permitted to agree to services with the client outside the scope of the agency contract. This ban continues to apply for six months after the employment relationship of the member of staff concerned has come to an end. Staff are not permitted to carry clients or their family and friends as passengers in SPITEX BERN vehicles or in private cars belonging to themselves, the client or third parties.

13. Gifts for staff

SPITEX BERN staff are not permitted to accept money or other gifts or bequests from clients that go beyond mere token gestures. Larger contributions can be made by donating to the staff fund.

14. Complaints

SPITEX BERN has a system for receiving, handling and logging complaints. As a basic principle, all SPITEX BERN staff are obliged to field complaints from clients and their families and friends and pass them on to the competent office. If a complaint cannot be resolved to both parties' satisfaction, the following procedure will be followed:

1. The parties will approach the Head of Care at SPITEX BERN and ask them to settle the matter.
2. If no agreement is reached, the parties will approach the SPITEX BERN management.
3. If no agreement is reached, the parties will be entitled to call in the Board of Directors, which will endeavour to settle the dispute amicably.

15. Place of jurisdiction

Bern shall always be the place of jurisdiction for all legal disputes arising out of the contract between SPITEX BERN and the client.