

# General Terms and Conditions of Purchase for Otto (GmbH & Co KG) and other companies of the Otto Group

## 1. Scope; Order placement

- 1.1 These general purchasing conditions apply to all orders that Otto (GmbH & Co KG) or a company affiliated with the Otto Group in accordance with Art. 15 et seq. of the German Stock Corporation Act (Aktiengesetz, AktG) (the "CUSTOMER") issues to its suppliers ("SUPPLIER").
- 1.2 As a general principle, orders are issued through electronic transmission.
- 1.3 Any company in the Otto Group may pursue the CUSTOMER's claims against the SUPPLIER.
- 1.4 The following conditions apply exclusively. Any conditions that contradict or differ from these conditions are ineffective unless the CUSTOMER agrees to them in writing.
- 1.5 These conditions will be updated from time to time; the SUPPLIER will be informed in due time.
- 1.6 The Code of Conduct for Merchandise applies as amended. It is available at: <http://ottogroup.com/de/verantwortung/Dokumente/Code-of-Conduct.php>.

## 2. Compliance with statutory provisions

- 2.1 The SUPPLIER shall comply with the applicable German laws and regulations, and the regulations and directives of the European Union. The SUPPLIER shall also observe the relevant DIN, EN, and ISO standards, unless otherwise agreed.
- 2.2 The SUPPLIER shall ensure that laws, directives, and regulations are promptly considered before they enter force, to make sure the CUSTOMER may use or sell goods the SUPPLIER provides without violating laws, directives, or regulations that take effect later.
- 2.3 On the CUSTOMER's request, the SUPPLIER shall provide proof of compliance with all statutory requirements before the goods are delivered.
- 2.4 If the SUPPLIER knows the goods are intended for a different country of delivery, the SUPPLIER shall also comply with the provisions of that country in accordance with the provisions of items 2 and 3.

## 3. Product safety; Insurance

- 3.1 The SUPPLIER shall be liable for damage and consequential damage suffered by the final purchaser. The SUPPLIER shall provide proof of compliance with the Product Safety Act (certification or test mark of a verifying authority) on request. If it does not provide that proof, or if it otherwise becomes evident that the product is not marketable, the SUPPLIER shall take back the article and refund the purchase price regardless of warranty periods.
- 3.2 During the period of cooperation and the obligatory limitation periods, the SUPPLIER shall maintain liability insurance (including product liability insurance) and product recall cost insurance with appropriate coverage. The SUPPLIER shall give the CUSTOMER confirmation of coverage from the insurer on request.

## 4. Quality guarantee

- 4.1 The articles ordered by the CUSTOMER must match the description of goods according to the European Article Number (EAN). If a sample has been requested, the article delivered afterward must match that sample's main characteristics.
- 4.2 The statements about the article made in the advertisement, on the label, and in the assembly instructions must be complete and correct.
- 4.3 The SUPPLIER shall comply with the quality requirements and environmentally relevant specifications agreed to with the CUSTOMER. If the quality requirements or environmentally relevant specifications change, the CUSTOMER shall send the SUPPLIER a change notice that includes information on the SUPPLIER's right to object. If the SUPPLIER does not object to the new version in writing without undue delay, the new version will be deemed agreed to.
- 4.4 The SUPPLIER shall perform a final inspection.
- 4.5 If the delivered goods do not meet the above criteria and the packaging and shipping instructions listed under Item 7, the SUPPLIER shall reimburse the CUSTOMER for documented costs arising from inspecting the goods, ascertaining the defect, sorting, changeover, and the like. OTTO may assert additional claims for damages.
- 5.1 **Industrial property rights and copyrights**  
The SUPPLIER ensures that the offer and sale of the goods does not violate any rights of third parties (such as copyrights, patents, utility patents, design patents, trademarks, licenses, claims under competition law, and the like) within the Federal Republic of Germany and does not violate legal or regulatory rules. The same applies to the offer and sale of the article outside the Federal Republic of Germany if the SUPPLIER is informed in the respective purchase order that the goods it offers will be sold both inside and outside the Federal Republic of Germany.
- 5.2 The SUPPLIER shall indemnify the CUSTOMER and its affiliated companies from any third-party claims based on rights under item 5.1 and compensate them for any further damage, including loss of prospective profits.
- 5.3 If offering and selling the goods requires obtaining particular licenses (such as patents essential to a standard), the SUPPLIER shall obtain those licenses at its expense and provide a sublicense to the CUSTOMER at no cost.
- 5.4 The SUPPLIER shall treat as confidential all the drawings, samples, and models it is given. Industrial property rights and copyrights to those drawings, samples, and models remain with the CUSTOMER. The SUPPLIER shall return the documents to the CUSTOMER with the final delivery.
- 5.5 Each time the SUPPLIER culpably violates one of the obligations above, the CUSTOMER may demand liquidated damages of EUR 10,000 or less. The amount of liquidated damages can be reviewed and may be adjusted by the court having jurisdiction. Further claims and rights remain unaffected.

## 6. Usage rights

- 6.1 If the data material provided (offer and product data, texts, photographs, graphics, trademarks, logos, product descriptions, and technical specifications) is protected by copyright or other industrial property rights, the SUPPLIER grants the CUSTOMER a simple (non-exclusive) right, applicable everywhere, to reproduce, disseminate, and/or publish that data material in non-material form (including without limitation by making the data material publicly available, transmitting the data, and/or reproducing the data in image and sound recordings), and to sub-license the above usage right to the data material to third parties.
- 6.2 The CUSTOMER may use the data material provided by the SUPPLIER solely within the context of product advertising; in this respect, the CUSTOMER may also use the data material to advertise identical products from other providers in the CUSTOMER's online shops.
- 6.3 The usage rights will remain in effect during the parties' contract relationship and for two months thereafter, so the contract relationship can be technically wound up. The CUSTOMER may adapt the data material to the technical requirements of the use of which notice has been given, and may remove the background from product images (release of product images).
- 6.4 The SUPPLIER shall discontinue any use of the data material on third-party platforms after termination of the contract, insofar as this is customary on the respective platforms and possible with reasonable effort. The SUPPLIER has to inform the CUSTOMER before charging a claim against him and has to give him at least 14 days to remedy the situation.
- 6.5 OTTO is not required to name the creator of the data material when exercising the rights it has been granted.
- 6.6 The SUPPLIER ensures it is entitled to the aforementioned licensing rights to the transmitted data material. In this respect, the SUPPLIER ensures that the contents of the data material do not violate the rights of third parties or any other legal rules.
- 6.7 The SUPPLIER shall indemnify the CUSTOMER on first request from claims asserted by third parties based on the contractual use of the transmitted data material.

## 7. Packaging and labelling

- 7.1 The goods must be labelled, packaged, and shipped in compliance with the packaging and shipping instructions given by the CUSTOMER. If there are no specific instructions, items must be labelled, packaged and shipped in a suitable manner and with due diligence.
- 7.2 Textiles must be labelled in compliance with the European Textile Labelling Act.
- 7.3 Unless otherwise agreed, if the SUPPLIER or its agent is located in the EEA, the SUPPLIER is obligated under the provisions of the Product Safety Law to indicate its company or its agent's company with a postal address on the product.

## 8. Private labels, licensed brands

- 8.1 Delivering articles that the SUPPLIER has manufactured specially for the CUSTOMER (such as private labels and licensed brands) to third-party buyers is forbidden both during and after termination of the supply contract.
- 8.2 The SUPPLIER shall purchase the label, (hang) tags, and buttons to be used for textiles solely from the companies specified by the CUSTOMER. If the SUPPLIER culpably violates this rule, the CUSTOMER may determine liquidated damages, the amount of which will be based on the type of violation, the severity of culpability, and the scope of impact. The amount of liquidated damages can be reviewed and may be adjusted by the court having jurisdiction.
- 8.3 In addition to 7.2, labelling specified by the CUSTOMER with respect to the supplier ID and any size indications must be permanently affixed to each article (by means of a sewn-in tag, for example). In addition to 7.3, the SUPPLIER shall forward to the CUSTOMER in writing without undue delay any safety-related or adverse health complaints from customers or inquiries by authorities relating to the private label articles.
- 8.4 The SUPPLIER shall treat as confidential all the drawings, samples, and models it is given. Industrial property rights and copyrights to those drawings, samples, and models remain with the CUSTOMER. The SUPPLIER shall return the documents to the CUSTOMER with the final delivery.
- 8.5 The SUPPLIER shall indemnify the CUSTOMER from all claims under product liability law and compensate the CUSTOMER for any damage (such as recall costs, interest losses, and attorney's costs) related to the product liability law.

## 9. Place of performance and transport

Unless otherwise regulated in an individual contract, the SUPPLIER shall deliver the ordered goods to the warehouse named in the order (or for direct shipments, to the end customer) at its own expense and risk.

## 10. Delivery deadlines

- 10.1 All delivery deadlines are binding. The SUPPLIER shall inform the CUSTOMER without delay, via the system interface, if circumstances arise that will make it impossible to meet the agreed delivery deadline, or if that impossibility becomes otherwise evident.
- 10.2 If the SUPPLIER is in default, the CUSTOMER will be entitled to the legal claims. In particular, the CUSTOMER may set a reasonable grace period and, if that period expires in vain, may withdraw from the contract and demand damages in lieu of performance. If that occurs, the CUSTOMER may make covering purchases and charge the additional costs to the SUPPLIER.
- 10.3 The CUSTOMER may accept goods arriving late by making an explicit declaration to the SUPPLIER to that effect. The pursuit of damages for delay and/or of liquidated damages under Item 11 remains reserved.
- 10.4 The SUPPLIER shall not fulfil an order before the agreed time.

## 11. Liquidated damages

- 11.1 If the SUPPLIER exceeds the delivery date agreed to between the parties, the CUSTOMER may demand liquidated damages amounting to 0.3% of the purchase price (net) per working day, but no more than 5% of the purchase price (net) in total (subject to further provisions). The amount of liquidated damages can be reviewed and may be adjusted by the court having jurisdiction. After accepting a delayed performance, the CUSTOMER shall not claim liquidated damages after payment has been made.

## 12. Obligations to perform inspections and give notice of defects

- 12.1 Notwithstanding the final inspection that the SUPPLIER shall perform in accordance with item 4.4, the CUSTOMER shall regularly inspect the goods per ISO 2859-1 (AQL sampling system). Regarding the inspection that the CUSTOMER shall perform under § 377 of the German Commercial Code (Handelsgesetzbuch, HGB), the SUPPLIER acknowledges that only evident defects must be reported immediately; otherwise, the notice of defects is deemed to be on time if the CUSTOMER gives it within 14 days after the defects are discovered.
- 12.2 The SUPPLIER acknowledges that it must obtain approval from its liability insurer for the preceding contract provision in order to maintain existing coverage without limitation.
- 12.3 The SUPPLIER shall give the CUSTOMER access to its production facilities for the ordered articles and to the production facilities of its sub-suppliers on consultation, shall permit audits to be performed, and shall provide the names and addresses of the sub-suppliers on request.

## 13. Prices

- 13.1 The agreed prices include the packaging required by the CUSTOMER and specific to the shipment. Price increases after order placement will not be accepted.

## 14. Invoicing

- 14.1 The SUPPLIER shall send the CUSTOMER invoices as a single copy, which must indicate the delivery address. Every delivery of goods must include a delivery note but need not include an original invoice. A single invoice must not include articles from more than one purchasing department.
- 14.2 The invoices must include: supplier ID, CUSTOMER order number, CUSTOMER order date, customary description of the goods, type of shipment, number of packages, CUSTOMER purchasing department, delivery note number, CUSTOMER article number, design, colour, size, quantity, gross and net weight, invoice and tax ID numbers of the SUPPLIER, and, for electric and electronic devices, the SUPPLIER's registration number under the German Act on the Marketing, Recall, and Environmentally Friendly Disposal of Electric and Electronic Devices (Elektro- und Elektronikgerätgesetz, ElektroG).
- 14.3 Invoices that do not contain the above reference to the order or do not meet the formal requirements of § 14 of the German VAT Act (Umsatzsteuergesetz, UStG) will be deemed not to have been received by the CUSTOMER, and the SUPPLIER shall reissue them on request.

## 15. Payment

- 15.1 In principle, payments must be made according to the conditions stated in the order. Without exception, they will be made only after the goods are received (or for cash purchases per document, when the documents are presented to the CUSTOMER).
- 15.2 The payment deadline is deemed met when a form of payment is sent or a payment order is issued to the bank. Payment and discount periods do not begin until the goods have arrived at the agreed stock location and the invoice has arrived in the CUSTOMER's department for supplier transactions.
- 15.3 When goods are received from first orders, the periods according to Item 15.2 are determined from the agreed delivery date.
- 15.4 If delivery is late, the periods according to item 15.2 will be delayed by the same number of days that the delivery is delayed.
- 15.5 The CUSTOMER may set off receivables that it owes against receivables that the SUPPLIER owes.
- 15.6 Payment of invoices will not affect any subsequent pursuit of rights. In particular, a payment does not constitute recognition of an obligation to pay, nor of the ordering of the goods, nor that the goods are complete and free of defects.

## 16. Taxes

- 16.1 If OTTO is obliged under applicable German law to withhold taxes from the amounts payable to the SUPPLIER and to pay them to the competent tax authority, OTTO shall withhold the amount of tax to be withheld and pay it to the competent tax authority.
- 16.2 Upon request, OTTO shall provide SUPPLIER with evidence of the taxes withheld and paid to the tax authorities.
- 16.3 If SUPPLIER subsequently proves that no German tax should have been withheld, OTTO shall reclaim and refund to SUPPLIER the taxes wrongfully withheld.
- 16.4 If OTTO would have been obliged to withhold taxes but failed to do so and has to pay these taxes additionally (within the limitation period) to the German tax office, SUPPLIER shall reimburse OTTO for the costs incurred.
17. **Intra-group clause**  
The CUSTOMER may forward the SUPPLIER's goods or spare parts to other companies affiliated with the Otto Group under § 15 et seq AktG.

## 18. Group setoff clause

If the CUSTOMER has no claims that it may set off in an amount equal to the SUPPLIER's claims against the CUSTOMER, the CUSTOMER may set the SUPPLIER's claims off against the claims of other companies in the OTTO Group under § 15 et seq AktG.

## 19. Right of retention and setoff; Right to withhold performance

- 19.1 The SUPPLIER may set claims off only against counterclaims that are undisputed or have been finally adjudicated.
- 19.2 The same applies to the assertion of a right of retention or right to withhold performance by the SUPPLIER. The SUPPLIER may assert those rights only if the counterpart rights are based on the same contract relationship. § 321 BGB remains unaffected.

## 20. Ban on assignment

Claims against the CUSTOMER may not be assigned, and any such assignment will be invalid. However, § 354 a HGB applies to the assignment of financial claims.

## 21. Expired claims of defect

- 21.1 Claims based on material defects or defects of title must be asserted no later than 30 months from the date on which the respective goods are delivered to the end customer. Those claims will be forfeited, however, 36 months after delivery to the CUSTOMER.
- 21.2 Longer statutory expiration periods are not affected by the preceding provision.
- 21.3 If the SUPPLIER provides newly delivered or repaired parts as supplementary performance, the limitation period for those parts will restart unless the SUPPLIER has evidently acted out of goodwill.

## 22. Customer evaluations

The CUSTOMER has an interest in the evaluations by customers in its online shops remaining unaltered. Therefore, the SUPPLIER shall not request or encourage customers of the CUSTOMER or third parties to provide, modify, or delete an evaluation in any of the CUSTOMER's online shops by promising a reward for doing so.

## 23. Nondisclosure

- 23.1 The SUPPLIER shall not disclose any information or knowledge it obtains in connection with the placement of the order by the CUSTOMER or an affiliated company, and shall pass that obligation on to its employees and subcontractors.
- 23.2 That obligation will remain in effect for two years after the activity ends. If it is breached, the SUPPLIER shall compensate for damages.
- 23.3 If the SUPPLIER demonstrably breaches the nondisclosure obligation, the CUSTOMER may also terminate the contract without notice and without prejudice to other rights.

## 24. Criminal and anti-constitutional organizations

The SUPPLIER shall not maintain any commercial or other connections with terror-ists, terrorist organisations, or other criminal or anti-constitutional organisations. The SUPPLIER shall ensure that appropriate organisational measures are taken to implement EU regulations nos. 2580/2001 and 881/2002 within its business operations.

## 25. Forum and applicable law

The forum is Hamburg, although the CUSTOMER may also sue the SUPPLIER at its registered office. Legal relations shall be governed solely by the status of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL, CISG).