

General purchasing conditions for Otto (GmbH & Co) and other companies of the Otto Group

- 1. Scope**
 - 1.1 These general purchasing conditions apply to all orders from Otto (GmbH & Co KG) or from its group companies (hereafter the CUSTOMER). The conditions that follow shall apply exclusively; conditions contradicting or differing from these conditions shall have no force exceptionally agreed by the CUSTOMER in writing.
 - 1.2 Ancillary agreements are to be made in writing. Oral agreements can only be relied on by a party if they have been confirmed in writing by at least one party immediately, or at the latest within 48 hours. If a written agreement is amended after its formation, a written record of the amendment must be made on the confirmation.
 - 1.3 The Code of Conduct for Services and Non-Merchandising Goods (<http://ottogroup.com/de/verantwortung/Dokumente/Code-of-Conduct.php>) shall apply in its most up-to-date version.
- 2. Place of Performance and Transport**

The PARTNER shall perform or supply the service in accordance with the provisions of the contract at the place of performance specified in the contract.
- 3. Packaging and Labeling**

In the absence of specific instructions, items are to be labelled, packaged and despatched in a suitable way with due care and attention. In the case of premium items, the items shall always be labelled, packaged and despatched in exact accordance with the CUSTOMER'S instructions for packaging and despatch.
- 4. Invoicing**

Invoices from PARTNERS within Germany are to be sent as a single copy; invoices from PARTNERS outside Germany are to be sent in duplicate and are to contain details of the PARTNER or supplier code. Invoices are to be sent to the department specified by the CUSTOMER. Part invoices shall only be recognised if they have been agreed for accounting purposes for the order to which they pertain. If a delivery is made to more than one address, separate invoices are to be issued for each address. Each delivery of goods is to contain a notice of delivery but not an original invoice. Invoices must contain only such items as have been ordered by a purchasing department. Invoices must contain the following order information: SUPPLIER code, CUSTOMER order number, CUSTOMER order date, the trade-standard description of the goods, quantity, position number, CUSTOMER'S purchasing department and place of performance or delivery address. Invoices that do not contain the aforementioned information or that do not conform to the requirement of sect. 14 of Germany's Sales Tax Act (Umsatzsteuergesetz - UStG) shall be deemed not received by the CUSTOMER and must be reissued by the PARTNER on request.
- 5. Service deadlines**
 - 5.1 All service deadlines are binding. The PARTNER shall inform the CUSTOMER immediately and in writing of any circumstances that arise or of which he becomes aware, which may result in the agreed delivery deadline not being met. A failure to cooperate on the part of the CUSTOMER shall only be deemed a significant factor in the delay if the PARTNER has given the CUSTOMER advance warning of the need cooperation.
 - 5.2 If the PARTNER is in default, the CUSTOMER shall be entitled to statutory claims. In particular, the CUSTOMER shall be entitled to demand compensation in lieu of the performance and to withdraw from the contract after first having given reasonable notice, to no avail. The CUSTOMER shall in that case especially be entitled to commission replacement orders at the PARTNER'S expense.
 - 5.3 Services/deliveries in arrears can be accepted by the CUSTOMER subject to express declaration submitted to the PARTNER. In this event, the right to bring claims based on loss due to delay or based on product defects or the incompleteness of the goods shall remain unaffected.
 - 5.4 The CUSTOMER reserves the right to send back goods that are delivered early. If the CUSTOMER does not send back the goods, as mutually agreed with the PARTNER, the CUSTOMER shall be entitled to charge the PARTNER for storage.
 - 5.5 The PARTNER is not entitled to make performance before the agreed time.
 - 5.6 Any payment obligations placed on the SUPPLIER in the context of an order from the CUSTOMER shall always be due for immediate payment.
- 6. Contractual penalties**
 - 6.1 In the event of a deadline being missed on account of the PARTNER, the CUSTOMER reserves in the right to levy a penalty of 0,1% of the fee (net) per working day up to a maximum of 5% in total. Other rights shall remain unaffected.
 - 6.2 Following receipt of a late delivery, the CUSTOMER must claim his right to the contractual penalty by the time final payment is made.
 - 6.3 If the contractual deadlines are changed by mutual agreement, the aforementioned contractual penalty shall also apply to the new deadlines. The CUSTOMER shall declare his intention to bring a claim for payment of the contractual penalty within ten working days of receipt of the goods in question.
- 7. Non-Assignment**

The assignment of claims against the CUSTOMER is not permitted. However, for the assignment of monetary claims, Section 354 of Germany's Commercial Code (Handelsgesetzbuch - HGB) shall apply.
- 8. Payment**
 - 8.1 Payment shall be made in accordance with the provisions of the contract and solely following the receipt of the PARTNER'S service.
 - 8.2 The CUSTOMER is entitled, but not obliged, to offset claims against the PARTNER with claims of the PARTNER against the CUSTOMER.
 - 8.3 The payment deadline shall be deemed to have been met if on or by the due date, payment is issued or a payment transfer instruction is issued to the bank. Payment and discount periods shall not commence until the service has been fully delivered and correctly invoiced to the CUSTOMER.
 - 8.4 The payment of invoices shall be without prejudice to any subsequent claims that may be brought in assertion of the CUSTOMER'S rights. Specifically, payment shall imply neither an obligation to pay, nor the ordering of the service, nor its completeness or defect-free performance.
 - 8.5 Any payment obligations placed on the PARTNER in the context of an order placed by the CUSTOMER shall always be due for immediate payment.
- 9. Minimum wage**
 - 9.1 The PARTNER guarantees that he pays his employees at least the statutory minimum wage and fulfils all the requirements of Germany's Minimum Wage Act (Mindestlohngesetz - MiLoG).
 - 9.2 The PARTNER guarantees that he is not excluded from the award of public-sector contracts.
 - 9.3 In the event that the PARTNER engages subcontractors for the performance of this contract (subcontracting), the PARTNER shall impose a written obligation in these subcontractors to adhere to MiLoG and shall monitor and ensure this adherence with appropriate measures. The PARTNER shall at first request provide the names of his subcontractors. The CUSTOMER reserves the right to make future subcontracting subject to his prior written permission.
 - 9.4 The PARTNER guarantees that either the CUSTOMER himself or a third party authorised by the CUSTOMER is entitled to monitor adherence to the MiLoG provisions through the application of appropriate measures. The aforementioned guarantees shall especially include the PARTNER'S obligation to provide the CUSTOMER on first request with randomly selected anonymised payrolls from his employees.
 - 9.5 Should claims be brought against the CUSTOMER by a third party as a result of the infringement of MiLoG by the PARTNER or his subcontractors, the PARTNER shall indemnify the CUSTOMER in full. This obligation to indemnify shall encompass fines and penalties as well as any claims brought by social security agencies or financial authorities. In the event that the CUSTOMER is entitled to assignable claims for damages against a third party as a result of an infringement of MiLoG, the CUSTOMER shall assign the rights to the PARTNER up to and including the amount by which the PARTNER has indemnified the CUSTOMER. Any agreed limitations on liability shall have no force.
 - 9.6 If the SUPPLIER or a subcontractor engaged by the SUPPLIER breaches any of the provisions of MiLoG, the CUSTOMER reserves the right to terminate the contractual relationship without notice.
- 10. Group offsetting**

If the CUSTOMER has no offsettable claims equal to the amount being claimed from the CUSTOMER by the PARTNER, the CUSTOMER reserves the right to offset against claims due to other companies that are part of the Otto Group (Ambria GmbH, baumarkt direkt GmbH & Co KG, Baur Versand (GmbH & Co KG), BFS Baur Fulfillment Solutions GmbH, bon prix Handelsgesellschaft mbH, bonprix Retail GmbH, CREATION L Handelsgesellschaft mbH, empiriecom KG, GSG Gastro Service GmbH, Handelsgesellschaft Heinrich Heine GmbH, Hermes Fulfillment GmbH, Josef Witt GmbH, SCHWAB VERSAND GmbH, Sieh an! Handelsgesellschaft mbH, SportScheck GmbH). The aforementioned companies are equally entitled to offset the PARTNER'S claims against them against claims due to the CUSTOMER.
- 11. Inspection and obligation to report defects when goods are delivered**

The period allowed under sect. 377 of the German Commercial Code (Handelsgesetzbuch - HGB) for providing notice of defects shall be deemed satisfied if the CUSTOMER sends such notice to the PARTNER within two weeks of discovery of the defect, unless a longer period is deemed appropriate. The relevant date shall be the day on which the notice of the defect is sent.
- 12. Guarantee/Liability/Insurance**
 - 12.1 Insofar as contractual or statutory provisions are not adhered to, statutory provisions shall apply, especially regarding liability for compensation under sect. 241 para. 2 and sect. 280 of Germany's Civil Code (Bürgerliches Gesetzbuch BGB). This shall not exclude the bringing of further claims nor the assertion of further rights.
 - 12.2 Receipt by the CUSTOMER of the PARTNER'S service does not constitute approval of the service. If the PARTNER'S service is defective, the CUSTOMER shall have recourse to statutory remedy of the defect(s) (especially under sect. 437ff BGB). Such remedy may include the Commercial Code (Handelsgesetzbuch - HGB) shall apply. CUSTOMER'S right to demand the supply of defect-free goods/services, the right to have the necessary repair or rectification undertaken (by the PARTNER, by a third party at the PARTNER'S cost or if necessary by the CUSTOMER himself) or, after the expiry of an appropriate period (insofar as such a period is required), to have the repair or rectification undertaken by a third party or by the CUSTOMER at the PARTNER'S cost, the right to withdraw from the contract, the right to reduce the purchase price (mark-down of purchase price), the right to compensation in lieu of service, or the reimbursement of wasted expenditure.
 - 12.3 If the attempt to rectify or repair faults is unsuccessful, then the CUSTOMER'S other rights to withdraw from the contract or to compensation in lieu of the PARTNER'S performance shall be due without the need for further deadlines to be set.
 - 12.4 Claims for faults or defects shall expire 36 months after the delivery/receipt of the goods/services.
 - 12.5 Claims for the infringement of rights shall in accordance with sect. 195 BGB expire three years after the infringement became, or should have become, apparent, up to a limit of ten years from delivery.
 - 12.6 The aforementioned provisions shall not affect longer expiry periods provided for by statute.
 - 12.7 For parts newly supplied or repaired or rectified by way of subsequent performance, the period within which claims can be brought shall begin anew, unless the PARTNER has clearly acted out of goodwill.
 - 12.8 The PARTNER shall be unconditionally liable for any damage culpably caused by the PARTNER or his agents. The PARTNER shall immediately inform the CUSTOMER of any loss or damage and, by keeping the proper records, shall ensure that, in the event of any loss or damage, the extent of the damage or destruction can be fully documented.
 - 12.9 The PARTNER shall at his own cost and for the duration of his performance of the order, protect and secure the services the PARTNER has prepared from any loss or damage that may occur prior to handover to the CUSTOMER and shall likewise protect and secure all the documents, work materials and data storage media provided to him by the CUSTOMER.
- 13. Usage rights**

For works and parts produced as part of the order and which are subject to copyright or other protection under commercial law, the PARTNER shall cede to the CUSTOMER the exclusive right in perpetuity and without limit of time to distribute, reproduce, publish and transfer them or to use them in any other way and to issue sub-licences. Such rights shall include, but are not be limited to the following usage rights:

 - the right to digitalisation and to digital, electronic and analogue storage on media to all kinds; the right to safe data in databases, including digital and electronic databases, and to record data on visual and audio media of all kinds;
 - the right to recording, filming, and total or partial reproduction and distribution of the works in all tangible forms, including print media (catalogues, advertising, promotional and PR material etc.) and data and visual storage media, and in all intangible from such as online, social media, blogs, interactive television, video on demand, SMS and other forms of telecommunication and intangible transfer or pictures and text;
 - the right to partially or completely adapt or reformulate the work, the right to amend it through the use of digital techniques, to translate it into other formats or merge it with other works, and to change the description of the copyright holder;
 - this understanding shall equally apply to the CUSTOMER'S associated and affiliated companies and to third parties acting in partnership with the CUSTOMER. The understanding also includes editorial reporting.
 - the documents supplied by the CUSTOMER to enable the PARTNER to work on the CUSTOMER'S orders, and the preparatory documents produced for the PARTNER, shall be treated as the confidential property of the CUSTOMER and shall be returned to the CUSTOMER free of charge upon his request.
 - The PARTNER shall be liable, even if not culpably so, for the breach by his services of third-party rights (copyrights, patents, utility models, registered designs, trademarks, licenses, claims based on competition law etc.) and of statutory or official regulations. The PARTNER shall indemnify the CUSTOMER and its associated companies from any third party claims and shall reimburse any further loss such as lost revenue.
 - All claims based on the PARTNER'S intellectual property rights are settled with the remuneration agreed.
- 14. Competition**
 - 14.1 If the PARTNER submits an offer based on a non-compete agreement in the sense intended by sect. 298 of Germany's Penal Code (Strafgesetzbuch - StGB) or if the PARTNER participates in prohibited restrictions on competition in the sense intended by Germany's Restriction of Competition Act (Gesetz gegen Wettbewerbsbeschränkungen - GWB) or participates in agreements with third parties regarding the tender or non-tender of offers, the price to be quoted of the specification of price recommendations, the PARTNER shall pay the CUSTOMER the sum of 10% of the net order amount.
 - 14.2 In the event of the circumstances described in 14.1 pertaining, the CUSTOMER reserves the right to withdraw for just cause. The PARTNER shall reimburse the CUSTOMER for all loss resulting directly or indirectly from its withdrawal from the contract. The obligation to pay the lump sum shall apply even if the contract is terminated or already performed.
- 15. Confidentiality, data protection**
 - 15.1 The PARTNER shall be observe the strictest confidentiality regarding all data and documents connected with his work and regarding all the commercial and operational secrets that become known to the PARTNER on account of his work. The PARTNER shall impose this obligation on his employees and subcontractors. The PARTNER shall be liable for any loss resulting from a failure to observe these confidentiality provisions. This obligation shall continue after the end of the related activity. In the event of failure to comply, the PARTNER shall pay compensation. The CUSTOMER shall furthermore be entitled to terminate the contract without notice and without prejudice to his other rights.
 - 15.2 The PARTNER shall ensure that the employees and agents he employs for the performance of the contract adhere to data protection regulations, and in particular to the requirements for data confidentiality as per sect. 5 of Germany's Data Protection (Bundesdatenschutzgesetz - BDSG). For the handling of personal data, the PARTNER shall implement appropriate technical and organisational measures as per sect. 9 BDSG.
- 16. Intra-group clause**

The CUSTOMER reserves the right to transfer the service to its associated companies or to allow them to use it. This shall not affect the PARTNER'S liability.
- 17. Environmental protection**

The PARTNER shall observe the CUSTOMER'S environmental guidelines. The PARTNER shall as far as economically and technically possible use environmentally responsible products, processes and packing for its supplies and services and adhere to all current environmental regulations in the performance of the contract.
- 18. Criminal and anti-constitutional organizations**

The PARTNER shall not have any commercial or other connections with terrorists, terrorist organisations or other criminal or anti-constitutional organisations. The PARTNER shall ensure that appropriate organisational measures are taken to implement EU regulations nos. 2580/2001 and 881/2002 within of its operation.
- 19. Jurisdiction**

The place of jurisdiction shall be located at the CUSTOMER'S head office insofar as the PARTNER is an enterprise. The CUSTOMER nonetheless reserves the right to bring claims against the PARTNER at the PARTNER'S registered office. Legal relations shall be governed solely by the statutes of Germany excluding UN commercial law (UNCITRAL, CISG).