

General Terms and Conditions of Purchase (NON-MERCHANDISE) of the Otto Group

1. Validity

1.1 These General Terms and Conditions of Contract shall apply to orders for non-merchandise goods and services placed by Otto GmbH & Co. KGaA or one of its group companies (hereinafter referred to as CLIENT). Group Companies of the Otto GmbH & Co. KGaA are such companies within the meaning of §§ 15 et seq. AktG (German Stock Corporation Act)(hereinafter referred to as "Otto Group Companies"). The following terms and conditions shall apply exclusively; conflicting or deviating terms and conditions shall not apply unless the CLIENT has expressly agreed to these terms and conditions in writing. Each agreement shall consist of the individual offer or purchase order together with these General Terms and Conditions of Contract (hereinafter "Order" or "Agreement").

1.2 Subsidiary agreements and amendment agreements must be in writing or in electronic form with a simple electronic signature.

1.3 The Otto Group Code of Conduct for Services and Non-Commercial Goods applies in its currently valid version, available at: [Otto Group: Reports, policies and commitments](#)

2 Place of Performance, Transportation and Packaging

The CONTRACTOR shall be obligated to provide or deliver the ordered goods/services at its own expense and risk at the place of performance specified in the Order. If the Order does not specify the place of performance, the place of performance shall be the CLIENT's location. The risk of accidental loss of the goods/services shall be borne by the CONTRACTOR.

3. Invoicing

Invoices shall be sent to the CLIENT in single copy, stating the contractor or supplier identification number, to the address or e-mail address specified by the CLIENT. Partial invoices shall only be recognized if this invoicing method has been expressly agreed for the Order. If a delivery is made to different delivery addresses, separate invoices shall be issued for each address. Each delivery of goods/services must be accompanied by a delivery bill, but not by an original invoice. The invoices must make the following references to the Order: CONTRACTOR code number, CLIENT order number (if available), commercial description of goods/services, quantity, and place of performance or delivery address. Invoices that do not contain the above references to the Order or do not comply with the formal requirements of § 14 Value Added Tax Act (UStG) shall be deemed not to have been received by the CLIENT and shall be reissued by the CONTRACTOR upon request.

4. Performance Deadlines

4.1 All performance deadlines are binding. The CONTRACTOR shall be obligated to inform the CLIENT immediately in writing if circumstances arise or become apparent to the CONTRACTOR which indicate that the agreed performance deadline cannot be met. The failure of the CLIENT to cooperate shall only be relevant for the determination of default of the CONTRACTOR if the CONTRACTOR has reminded the CLIENT of such duties to cooperate.

4.2 If the CONTRACTOR is in default, the CLIENT shall be entitled to the statutory claims. In particular, the CLIENT shall be entitled to demand compensation instead of performance and to rescind if the Agreement after having set a reasonable deadline in vain. In this case, the CLIENT shall in particular be entitled to place covering orders and to charge the additional costs to the CONTRACTOR.

4.3 The CLIENT may accept late goods/services by making an express declaration to the CONTRACTOR. In this case, the assertion of damages caused by default and the assertion of rights for the defectiveness or incompleteness of the goods/services shall remain reserved.

4.4 The CONTRACTOR shall not be entitled to effect performance before the agreed time. The CLIENT reserves the right to return deliveries received prematurely. If the CLIENT waives a return shipment in agreement with the CONTRACTOR, the CLIENT shall be entitled to charge the storage costs to the CONTRACTOR.

5. Default

5.1 In the event of default in delivery for which the CONTRACTOR is responsible, the CLIENT shall be entitled to demand a contractual penalty of 0.1% of the respective remuneration (net) per business day, but no more than 5% in total. The amount of the contractual penalty may be reviewed by the competent court and adjusted if necessary. The CLIENT reserves the right to assert further rights against the CONTRACTOR.

5.2 If the contractual deadlines are changed by mutual agreement, the aforementioned contractual penalty shall also apply to these new deadlines.

6. Prohibition of Assignment

6.1 The assignment of claims against the CLIENT is not permitted. However, § 354 a HGB (German Commercial Code) shall apply to the assignment of monetary claims.

6.2 The CONTRACTOR may not set off claims to which it is entitled under the contract against claims of the CLIENT or refuse to fulfill an obligation under the contract with reference to a right of retention, unless the rights or claims are undisputed by the CLIENT or have been legally established.

7. Payment

7.1 The CLIENT shall not be obligated to call up time quotas. This applies in particular to maximum amounts stated in the Agreement – such amounts are not binding. Hours or days not called up by the CLIENT shall not be remunerated.

7.2 Payments shall always be made in accordance with the conditions stated in the Order and, without exception, only after receipt/delivery or acceptance of the CONTRACTOR's performance.

7.3 The CLIENT shall be entitled, but not obligated, to offset claims against the CONTRACTOR against claims that the CONTRACTOR holds against the CLIENT.

7.4 The payment deadline shall be deemed to have been met when the means of payment is dispatched or a payment order is issued to the bank. Payment and discount periods shall not commence until the invoiced goods/services have been provided in full and the proper invoice has been received by the CLIENT.

7.5 Payment of invoices shall be made without prejudice to the subsequent assertion of rights. In particular, productive use of the goods/services and/or payment thereof shall not constitute recognition of any payment obligation, correctness of the invoice, or completeness of the goods/services or freedom from defects of such.

7.6 Payment obligations of the CONTRACTOR in connection with an Agreement shall be due immediately.

7.7 The Contractor may not set off claims to which it is entitled under the Agreement against claims of the Contractor or refuse to fulfill an obligation under the Agreement with reference to a right of retention, unless the rights or claims are undisputed by the Client or have been legally established by a competent court.

8. Minimum Wage

8.1 The CONTRACTOR guarantees that the wage paid to its employees is at least equal to the statutory minimum wage and that it complies with all obligations arising from the German Minimum Wage Act (MiLoG).

8.2 The CONTRACTOR guarantees not to be excluded from the award of public contracts.

8.3 In the event that the CONTRACTOR commissions subcontractors to fulfill this Agreement (= subcontracting), the CONTRACTOR shall obligate such subcontractors in writing to comply with the provisions of the MiLoG and to verify or ensure compliance by means of suitable measures. Upon first request, the CONTRACTOR shall be obligated to name the subcontractors commissioned. The CLIENT expressly reserves the right to make subcontracting dependent on the CLIENT's prior written consent at any time in the future.

8.4 The CONTRACTOR guarantees that the CLIENT and third parties authorized by the CLIENT are entitled to verify compliance with the statutory obligations arising from the MiLoG by means of suitable measures. This includes, in particular, the CONTRACTOR's obligation to provide the CLIENT with anonymized payslips of its employees on a random basis upon first request.

8.5 If claims are asserted against the CLIENT by third parties due to violations of the MiLoG by the CONTRACTOR or its subcontractors, the CONTRACTOR shall indemnify the CLIENT in full. This indemnification obligation shall also include administrative fines and penalties as well as claims by social security institutions and tax authorities. In the event that the CLIENT is entitled to assignable claims for damages against third parties arising from a claim due to a violation of the MiLoG, it shall assign these to the CONTRACTOR in the amount of the indemnification actually provided. Any agreed limitations of liability shall not apply.

8.6 If the CONTRACTOR or a subcontractor employed by the CONTRACTOR violates the provisions of the MiLoG, the CLIENT shall be entitled to terminate the contractual relationship without notice.

9. Inspection and Objection Obligations for Deliveries of Goods

The deadline for notification of defects (§ 377 of the German Commercial Code (HGB)) shall be deemed to have been met if the CLIENT has sent the notice of defects to the CONTRACTOR within 2 weeks of discovering the defect in the purchased item, unless a longer period is appropriate. The date of dispatch of the notice of defects shall be decisive.

10. Warranty/Liability/Insurance

10.1 Insofar as contractual or statutory obligations are not complied with, the statutory provisions shall apply, in particular liability for compensation for damages in accordance with §§ 241 (2) and 280 of the German Civil Code (BGB); further claims/rights shall remain unaffected.

10.2 Acceptance of the service by the CLIENT shall not constitute approval of the service by the CONTRACTOR. If the CONTRACTOR's performance is defective, the CLIENT shall be entitled to the statutory claims for defects (in particular with §§ 437 et seq., §§ 634 et seq. BGB). These rights include in particular the right, at the CLIENT's discretion, to demand delivery of defect-free services or rectification of the defect. If the defect has not been remedied by subsequent delivery or rectification, the CUSTOMER may, after expiry of a reasonable period of time, insofar as this is not dispensable, have the defect remedied by a third party or by the CLIENT at the expense of the CONTRACTOR insofar as a work service is involved, declare withdrawal, reduce the remuneration or claim damages instead of performance. Further claims for damages by the CUSTOMER shall remain unaffected by this.

10.3 The limitation period for claims for defects is 36 months calculated from the delivery of the goods/services.

10.4 The limitation period for defects of title shall be three years from the date of knowledge or the date the defect ought to have been known in accordance with § 195 BGB, but no longer than 10 years from delivery.

10.5 Longer statutory limitation periods shall not be affected by the above provisions.

10.6 For parts newly delivered or repaired by the CONTRACTOR by way of subsequent performance, the limitation period shall begin anew, unless the CONTRACTOR has clearly acted as a gesture of goodwill.

10.7 The CONTRACTOR shall be liable without limitation for all damages culpably caused by it or its vicarious agents. The CONTRACTOR shall notify the CLIENT immediately of the occurrence of any damages and shall ensure, by keeping appropriate records and lists, that in the event of damages the scope of the damaged or destroyed goods/services can be fully proven.

10.8 The CONTRACTOR shall be responsible for protecting and insuring its completed goods/services prior to the provision to the CLIENT and for protecting and insuring all documents, work materials and data carriers provided to the CONTRACTOR by the CLIENT against damages of any kind at its own expense during the execution of the Order.

10.9 The CONTRACTOR is obligated to take out liability insurance for personal injury, property damage and financial loss as well as insurance to cover the risks in accordance with the Environmental Liability Act in a sufficient amount at all times and to present it at the request of the CLIENT.

11. Rights of Use

11.1 The CONTRACTOR shall grant the CLIENT the exclusive right, unlimited in terms of territory, time and content, to publish, reproduce, distribute and/or publicly reproduce in non-physical form (right of public reproduction) works and parts thereof created within the scope of the Order for which copyright protection or other industrial/intellectual property rights exist. In addition, the CLIENT shall be permitted to edit the works and to transfer rights of use to third parties or to grant sublicenses.

11.2 If the CONTRACTOR develops software for the CLIENT, the CONTRACTOR shall also grant the CLIENT the rights to the source code. The integration of open source software components and creative commons content requires the prior consent of the CLIENT.

11.3 The CONTRACTOR shall be liable for ensuring that no third-party rights (copyrights, patents, utility models and designs, trademarks, licenses, claims under competition law, etc.) are violated by its goods/services and no statutory or official regulations are violated. The CONTRACTOR shall be obligated to indemnify the CLIENT and the Otto Group Companies against any claims by third parties and to compensate any further damages, including loss of profit.

11.4 The agreed remuneration shall cover all claims arising from industrial/intellectual property rights of the CONTRACTOR or third parties. The CONTRACTOR shall be obligated to inform the CLIENT in advance whether AI systems were used in the creation of software or other works. The CONTRACTOR shall grant the CLIENT the rights to the results generated using an AI system in accordance with Section 11.1 and 11.2, in particular if the CONTRACTOR has revised the software or works without using AI.

This shall also apply if no copyrights to the software and/or works originate during creation. If the CONTRACTOR's services are provided by means of AI systems, the CONTRACTOR shall use the AI systems in accordance with their terms of use and shall only use the AI systems to the extent permitted by law.

12. Competition Clause

12.1 In the event of submission of offers based on agreements restricting competition within the meaning of § 298 of the German Criminal Code (STGB) or participation in unlawful restrictions of competition within the meaning of the Act against Restraints of Competition (GWB) or Art. 102 of the Treaty of the Functioning of the European Union (TFEU), in particular an agreement with third parties on the submission or non-submission of offers, on prices to be demanded, on the determination of price recommendations, the CONTRACTOR shall pay 10% of the net order amount to the CLIENT (without prejudice to proof of higher damages).

12.2 In the cases specified in Section 12.1, the CLIENT shall be entitled to withdraw from the Agreement for good cause. The CONTRACTOR shall compensate the CLIENT for all damages incurred directly or indirectly as a result of the withdrawal from the Agreement. The obligation to pay the lump sum as set forth in Section 12.1 shall also apply if the Agreement is terminated or has already been fulfilled.

12.3 The CONTRACTOR shall inform the CLIENT without undue delay of the occurrence of the cases specified in Section 12.1.

13. Confidentiality/Data Protection

13.1 The CONTRACTOR undertakes to maintain secrecy about this Agreement and all confidential information that becomes known during the execution of this Agreement and not to make confidential information accessible to third parties. Confidential information is all non-public information that is disclosed or made accessible to the CONTRACTOR directly or indirectly by the CLIENT or by an Otto Group Company in connection with an Order if it is marked as confidential or if it can reasonably be regarded as confidential due to its content or the circumstances. The confidentiality obligation shall not apply to such documents, knowledge and information for which the CONTRACTOR proves that they have become generally known for a reason for which the CONTRACTOR is not responsible. The confidentiality obligation shall apply beyond the end of the respective Order for a period of 3 years.

13.2 The CONTRACTOR undertakes to comply with all data protection regulations, in particular those of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG) as amended from time to time. The CONTRACTOR shall obligate its employees and vicarious agents used to perform the Agreement to comply with the provisions of data protection law and, in particular, to maintain data secrecy within the meaning of § 53 BDSG. It shall take suitable technical and organizational measures for the processing of personal data in accordance with § 32 GDPR.

14. Group Clause

The CLIENT shall be entitled to deliver the goods/service to Otto Group Companies or have such goods/services used by them. This shall not affect the CONTRACTOR's liability.

15. Information Security

Security incidents at the CONTRACTOR that are related to data or services for the CLIENT or that may have a direct impact on the CLIENT must be reported to the CLIENT within 48 hours of becoming known, or immediately in the case of critical incidents. The report must state what type of security incident it is and how the criticality is assessed. The CONTRACTOR shall support the Client in fulfilling any reporting and documentation obligations regarding a security incident, in particular vis-à-vis responsible authorities, as well as in eliminating the effects of security incidents and minimizing the damage, free of charge.

16. Compliance with Legal Regulations/Occupational Health and Safety/Employed Personnel

16.1 The CONTRACTOR undertakes to comply with all mandatory applicable statutory, trade association and other safety regulations applicable under the Agreement, in particular with regard to occupational health and safety, vis-à-vis the CLIENT. The CONTRACTOR shall pass on these regulations to subcontractors and vicarious agents/assistants or ensure in another comprehensible manner that these regulations are complied with during the performance of the service on the CLIENT's premises. Upon conclusion of the Agreement, the CONTRACTOR confirms that a current risk assessment (Gefährdungsbeurteilung = GBU) is available for the commissioned activity.

16.2 The CONTRACTOR warrants that it will only deploy carefully selected, reliable specialist personnel who is qualified for the provision of the goods/services owned and has the necessary expertise.

16.3 The CONTRACTOR warrants that the CONTRACTOR or its subcontractors shall only deploy foreign personnel if such personnel holds a valid residence permit with permission to exercise gainful employment/employment for the entire duration of the services owed by the CONTRACTOR and are not subject to any prohibition or restriction in relation to the services owed. Upon request, the CONTRACTOR shall provide the CLIENT with appropriate evidence. If claims are asserted against the CLIENT by third parties, in particular the competent authorities, due to a breach of the aforementioned obligation by the CONTRACTOR or its subcontractors, the CONTRACTOR shall indemnify the CLIENT in full and bear all costs and expenses in connection with the claim.

17 Jurisdiction/Choice of Law

If the CONTRACTOR is a merchant, the place of jurisdiction shall be determined by the registered office of the CLIENT. However, the CLIENT shall also be entitled to sue the CONTRACTOR at the latter's registered office. Legal relationships shall be governed exclusively by the laws of the Federal Republic of Germany, provided, however, that the UN Convention on Contracts for the International Sale of Goods (UNCITRAL, CISG) shall not apply.

18. Severability Clause

The invalidity of individual provisions shall not affect the validity of the remaining clauses. In the event that a provision is invalid or unenforceable, it shall be replaced by a valid provision that comes as close as possible to the legal and economic purpose of the invalid provision.