

Standard Conditions of Purchase of Otto International (USA) LLC

1. Order Placement

1.1 These standard conditions of purchase alone shall apply to any purchase of goods by Otto International (USA) LLC (OI) from Supplier; any countervailing or different conditions shall have no validity unless OI has given its written assent to said conditions on an exceptional basis. Any different or additional terms and conditions in any order confirmation or other Supplier document are hereby expressly rejected.

1.2 Any and all collateral agreements, amendments, or modifications must be made in writing and signed by an authorized representative of OI, and any such agreement, amendment, or modification shall make an explicit reference hereto.

2. Protection of Fair Competition

2.1 For the entire period during which any goods ordered hereunder are offered for sale to final customers, the Supplier is prohibited from supplying directly or indirectly to third parties any articles in the same form or design or a similar form or design that may cause confusion. Brand name articles that have not been produced for OI shall be excepted.

2.2 All information made available to the Supplier by OI shall be treated confidentially as a trade secret by the Supplier and its officers, directors and/or employees. This includes drawings, samples and any other information regarding the characteristics of the ordered goods. Such information shall not (i) be disclosed in any manner to any third party without the written consent of OI, except to the extent that the disclosure of such information shall become necessary for the Supplier to perform its obligations under this agreement, and (ii) be used by the Supplier for any purpose other than is necessary for Supplier to perform its obligations under this agreement. In no event shall Supplier use any such information for its own benefit or the benefit of a third party.

3. Quality Guarantee

3.1 The articles ordered by OI must be supplied in a condition that fully corresponds to any samples previously submitted and approved by OI ("Samples"), i.e. they must conform to the characteristics of such Samples in terms of their technical features, form, workmanship and design and they must exhibit the qualities as guaranteed. Furthermore those articles ordered by OI must be supplied in a condition that fully corresponds to the released material composition submitted and approved by OI in terms of their material/accessories composition. All the technical characteristics, workmanship and appearance of the samples and material compositions approved and released by OI shall be construed as guarantees of workmanship. Nothing in the foregoing shall limit any express warranties by Supplier, including, without limitation pursuant to Section 2-213 of the Uniform Commercial Code.

3.2 The Supplier is under obligation to perform a final inspection prior to delivery to OI. Any deviation of products from the Samples must be approved in writing by OI prior to delivery.

4. Prices

The stipulated prices are deemed to include packaging and shipping. The prices agreed in the order shall be binding for the entire period during which these types of goods are sold by OI. This shall also apply to any follow-on orders.

5. Packaging and Labeling

The labeling, packaging and shipping of the merchandise must comply in every way with the packaging and shipping instructions provided by OI. In the absence of specific instructions, the labeling, packaging and shipping of the merchandise shall be effected as required for shipment and with the due care and diligence of a prudent businessperson.

6. Period of Performance

6.1 All delivery dates are binding. The Supplier shall be obliged immediately to notify OI in writing should circumstances change or become apparent to him as a consequence of which the agreed delivery deadline is no longer tenable.

6.2 Should the supplier fail to meet any delivery date or otherwise be in default, OI shall be entitled to all remedies available under applicable law, including the Uniform Commercial Code and in equity. Without limiting the generality of the foregoing, in the event of any delay or default, OI shall be entitled to immediately cancel or reject the applicable order, purchase substitute goods as "cover" and recover from Seller all related costs, and recover damages..

6.3 OI may accept merchandise delivered late by submitting a written declaration to such effect to the Supplier. In this case, the rights to claim damages caused by delayed performance and due to defective or incomplete goods are reserved.

6.4 The Supplier is not entitled to make performance of an order prior to the stipulated time.

6.5 Payment obligations of the Supplier are always due immediately.

7. Place of Performance and Transport

The Supplier is under obligation to deliver the merchandise which has been ordered at its own cost and its own risk to the warehouse designated by OI. However, should it be provided in the order or in a supplemental provision in the forwarding instructions or routing order that the merchandise is to be collected from the Supplier by OI authorized shipper at its own cost, then the risk shall pass at the proper delivery of the merchandise to its authorized shipper in accordance with the packaging and forwarding instructions.

8. Invoicing

The Supplier shall submit its invoices in quadruplicate. The address of the recipient of the shipments must be designated in the invoice. In the event that the shipment has been delivered to several different recipients, individual invoices are to be issued. Original invoices must not accompany the shipments. Each invoice must show articles from only one purchasing division.

The invoices must contain the following information: supplier identification code (LKZ), order number, order date, a description of the goods, type of shipment, number of units (packages), delivery note number, OI article number(s), design, color, size and quantity, gross and net weight, Supplier's invoice and tax number, and any registration number required by law in the country of destination as specified in the relevant purchase order.

9. Non-Assignment

Supplier may not delegate or assign any of its rights or obligations hereunder or relating to the subject matter hereof or any goods furnished to OI.

10. Payment

10.1 As a general rule, payment is to be effected in accordance with the terms cited in the order and, in every case, only after the receipt of the goods or, if cash against documents has been agreed, once the documents have been submitted to OI.

10.2 The dispatch of means of payment or the submission of the payment order to the bank shall be relevant for determining compliance with the time limit for payment. Payment and discount periods shall not commence until both the merchandise has been received in the agreed warehouse and the invoice has been received by OI in its supplier trading division.

10.3 For acceptance of goods under initial orders determination of the deadlines pursuant to Clause 10.2 shall commence on the agreed delivery date.

10.4 In the event of late delivery the number of days late shall be added on to the start of the deadlines under Clause 10.2.

10.5 OI has the right, but is under no obligation to offset claims against the Supplier with claims of the Supplier against OI.

10.6 OI is entitled to pay invoices from Suppliers in the Federal Republic of Germany by means of a three-month bill of exchange that is free of expenses for the Supplier. This shall not affect the terms of payment.

10.7 The payment of invoices shall be effected without prejudice to the subsequent exercise of rights. Specifically, the payment does not constitute the acknowledgement of an obligation to pay or of having ordered the merchandise, or confirmation that the merchandise is complete or free from defects or otherwise conforms to the requirements set forth herein.

11. Inter-company Offsetting

In the event that OI does not have offsettable claims in an amount corresponding to the Supplier's counterclaims, OI has the right to offset against claims of other companies belonging to the Otto Group (Alba Moda GmbH, baumarkt direkt GmbH & Co KG, Baur Versand (GmbH & Co KG), bon prix Handelsgesellschaft mbH, CREATION L Handelsgesellschaft mbH, Discount24 GmbH & Co. KG, Heinrich Heine GmbH, Josef Witt GmbH, Küche & Co GmbH, Otto (GmbH & Co KG), SCHWAB VERSAND GmbH, Sieh an! Handelsgesellschaft mbH, SportScheck GmbH) and any other affiliates of OI. Similarly, the above-cited companies and other affiliates of OI are also entitled to offset claims of OI against the Supplier's claims.

12. Offset Prohibition / Prohibition of Right to Delay or Refuse Performance

The Supplier is not permitted to offset claims or to delay or refuse performance on any grounds.

13. Duties of Inspection and Complaints

13.1 Independent of the final inspection to be performed by the Supplier pursuant to No. 3.2 herein, OI shall have the right but not the obligation to conduct inspections of the goods (including pursuant to ISO 2859-1 (AQL sampling system)), provided that any acceptance or failure to reject, or any failure to provide notice of any defects shall not limit any rights or remedies of OI on account of any defects, whether obvious or otherwise.

13.2 The Supplier is expressly notified of the requirement to obtain the assent of his liability insurer to the above contractual provision in order to maintain in force without restriction the existing insurance cover (German suppliers of § 4 I 1 AHB).

13.3 The Supplier shall, after consultation, grant OI access to his production plants for the articles on order as well as to those of his subcontractors, permit audits and disclose its subcontractors' names and addresses when so requested.

14. Compliance with statutory provisions

14.1 The Supplier shall comply with all applicable laws and regulations in the country of manufacture and the country of destination as specified in the relevant purchase order, including, without limitation, all laws and regulations regarding product safety. The Supplier hereby represents, warrants, and covenants that the sale and marketing of goods supplied to OI does not violate any laws or regulations in the country of sale. The supplier shall also abide by all applicable standards and obtain all applicable certifications (e.g., DIN, EN, ISO, UL, CSA), unless agreed otherwise.

14.2 The Supplier shall also comply with all laws, regulations, ordinances, directives and standards applicable to future deliveries of articles without this requiring any specific mention.

14.3 The supplier shall ensure that laws, regulations, directives and ordinances are taken into consideration in good time before they come into force in order to ensure that his supplies of goods may be used or sold by OI without violating any laws, regulations, directives and ordinances that come into force at a later date.

14.4 At OI's request, the supplier shall furnish evidence that all applicable requirements have been met prior to delivery of the goods.

14.5 Where the supplier is aware that the goods are intended for further transport to a country other than the country of destination, the supplier shall also be required to comply with such other country's laws and regulations in accordance with the provisions of this Section 14.

14.6 The Supplier shall also undertake to adhere to the Otto Group Code of Conduct in its latest version, accessible online at www.ottogroup2b.com.

14.7 Supplier shall designate and certify the country of origin and manufacture of the goods in accordance with all applicable laws and regulations, including, without limitation, the United States Tariff Act and any applicable customs and Federal Trade Commission rules and regulations.

15. Warranty

15.1 In addition to the Supplier's warranty pursuant to Section 3.1 that goods delivered to OI conform to any Samples, and without limiting anything else in this Agreement or any other rights, remedies, and warranties, whether express, implied, or statutory, Supplier represents, warrants and covenants that (a) all goods furnished to OI conform to the order and all applicable specifications, are merchantable, free from defects in design, material, and workmanship, are new, fit and sufficient for the particular purpose of OI and its customers to the extent known to Supplier; (b) Supplier has good and marketable title to the all goods to be furnished to OI and there are no liens, claims or encumbrances of any kind whatsoever against the same; (c) the goods furnished to OI and their manufacture, sale, offer for sale, import, and export, and use do not infringe, misappropriate or otherwise violate any intellectual property rights or any other rights of third parties, (d) the Supplier shall comply with all packaging and forwarding instructions by OI, (e) the goods furnished to OI comply with all applicable labeling requirements, and shall be furnished with accurate and complete labels, care symbols, article inserts, and directions for use and assembly, and appropriate or required instructions and warning, and (f) all declarations, representations, claims, and other statements made in respect of the goods or on any labels are complete and accurate.

15.2 OI's receipt of, or failure to reject, the goods shall not be construed as acceptance of the supplier's performance. In the event of any breach of warranty or any other failure by Supplier to comply with all requirements pursuant hereto or meet any obligations pursuant hereto or pursuant to applicable law, OI shall be entitled to all rights and remedies available hereunder and under applicable law and in equity. Without limiting the generality of the foregoing, OI may, in its discretion, demand the supply of goods free of defects, rectification (by the supplier), have the defect remedied by a third party or by OI at the supplier's expense, cancel the applicable purchase order, reduce the purchase price, seek cover, and recover damages.

15.3 The return of defective goods to the Supplier shall not be construed as a request to supply replacements goods. The Supplier shall be obliged to accept all returns of defective goods and immediately reimburse the full invoice value plus OI's disbursements in particular any wasted inbound freight costs.

15.4 OI shall be further entitled to charge the supplier for the cost of all inspections of defective goods.

15.5 Any costs incurred by OI as a result of a defective delivery, in particular transport, travel, labour or material costs or costs of a receiving inspection, and any other consequential or incidental harm, shall be borne by the Supplier and without limiting any other rights and remedies of OI under applicable law or in equity.

16. License for Cover

If OI exercises its right to cover, OI shall be entitled to make use of, and Supplier hereby grants OI a license to use and permit its affiliates and its and their alternative suppliers to use, any intellectual and industrial property rights of Supplier (such as copyright, patents, utility patents or registered designs, trademarks, licenses, etc.), in connection with the design, manufacture, and sale of cover goods. To the extent that any third party rights are violated by the exercise of such rights, the Supplier (cf. No. 18 herein) is obliged to indemnify OI, its affiliates and its and their respective alternative suppliers from any and all third party claims.

17. Liability

17.1 Supplier shall be fully liable for any failure of the goods furnished to OI to comply with all applicable laws and regulations or meet any requirements set forth herein (in particular in Sections 3, 14, 15, and 18), such liability to include any

direct, indirect, and consequential damages caused to the ultimate buyer, whether based on a theory of product liability or otherwise. Upon request, the Supplier is under obligation to produce proof of compliance with the requirements set forth herein (including, for example, a certificate or seal of a testing agency). Supplier shall, at its own cost, cooperate with OI and promptly comply with any instructions by OI or any government agency regarding the recall of any goods.

17.2 Supplier agrees to indemnify and hold harmless, and if so requested by OI defend, OI, its affiliates, and their respective customers, employees, successors and assigns from and against any losses, liabilities, costs, damages, claims, fines, penalties and expenses (including, without limitation, costs of defense or settlement and reasonable attorneys', consultants' and experts' fees) that arise out of or result from: (a) injuries or death to persons or damage to property, any product liability claims, and any recall in any way arising out of or caused or alleged to have been caused by the goods furnished by Supplier; (b) any breach of any representation, warranty, or covenant by Supplier or any failure of Supplier to perform its obligations under this Agreement; and (c) violation of any law or regulation in any way arising out of or caused or alleged to have been caused by Supplier's activities or the goods furnished by Supplier. In addition the Supplier shall bear and/or reimburse any costs and expenses incurred by OI in connection with the inspection, determination of defects, sorting, retrofitting, and recall of any goods furnished to OI that do not comply with all the requirements hereof.

17.3 Supplier shall maintain in effect at all times comprehensive general liability insurance covering Supplier's potential liability hereunder or otherwise in connection with the goods furnished by Supplier. Such insurance shall remain in force as long as such goods are in the market. Supplier shall furnish a certificate of insurance to OI naming OI as an additional insured. Certificates of insurance evidencing such coverage shall provide that OI shall be given ten (10) days written notice before cancellation or reduction of any of the insurance coverage. The liability of Supplier under this Agreement shall not be limited to the amount of insurance which the Supplier is carrying.

18. Industrial Property Rights

18.1 The Supplier represents, warrants and covenants that the goods furnished to OI and their manufacture, sale, offer for sale, import, and export, and use do not infringe, misappropriate or otherwise violate any intellectual property rights or any other rights of third parties.

18.2 Section 18.1 shall apply in the event that the articles are offered and sold outside the country of destination unless the parties have expressly agreed that the goods furnished are not to be sold in such other countries.

18.3 OI shall solely own all right title and interest in and to, (a) any and all designs, drawings, samples, models, and other subject matter furnished by OI to Supplier and any copies, portions, extracts, and derivatives thereof ("OI Materials"), and (b) all intellectual property and other proprietary rights relating thereto; and Supplier hereby assigns any and all right, title, and interest it may have in or to any of the foregoing to OI and agrees to take such further acts and execute such further documents as may be requested by OI to effect, protect, or evidence OI's sole ownership therein and thereto. Supplier shall treat all OI Materials and any other non-public information and materials of OI (and any copies, portions, extracts, and derivatives thereof) confidential and shall (i) not use same for any purpose other than expressly permitted by OI, (ii) not disclose same to any third party, and (iii) immediately return same to OI upon request and in any event with the final delivery or if a model has not been accepted.

18.4 As between OI and Supplier, OI retains and shall solely own all right title and interest in any trademarks of OI and its affiliates and their respective licensors ("Trademarks"). All use of the Trademarks and goodwill associated therewith shall inure solely to the benefit of OI and its affiliates and their respective licensors. Supplier shall not, during or after the term of the parties' business relationship,

(i) register the Trademarks or any trademarks confusingly similar thereto in any class of products or services, (ii) challenge the validity of the Trademarks, (iii) use the Trademarks in any manner except as expressly authorized by OI in advance in writing, (iv) supply any goods bearing the trademarks to any party other than OI without OI's prior written consent.

18.5 The Supplier hereby covenants not to assert any intellectual property rights against OI or any of its affiliates and their respective distributors, resellers, and customers in connection with the distribution and sale of goods furnished to OI.

19. Group Clause

OI is entitled to supply the merchandise to associated companies. This shall not affect the liability of the Supplier in its relations with OI. OI shall also be entitled to supply consumers abroad and accordingly to advertise the goods abroad, for example by means of catalogues, mail shots, brochures, CD-ROMS, floppy disks, video, film, DVD, internet, TV on demand, SMS or other forms of telecommunication and non physical transmission of images and text. The supplier's liability toward OI shall remain unaffected.

20. Criminal and anti-constitutional organizations

The Supplier warrants that he shall not have any business or other contacts with terrorists, terrorist organizations or other criminal or anti-constitutional organizations. In particular the Supplier shall put in place organizational measures to ensure that EU Directive Nos. 2580/2001 and 881/2002 are implemented as part of his business operation.

21. Place of Jurisdiction and Choice of Law/General

Supplier hereby consents to and submits to the non-exclusive jurisdiction of the state and federal courts in and for the Southern District of New York. This agreement is to be construed in accordance with and governed by the internal laws of the State of New York (as permitted by Section 5-1401 of the New York General Obligations Law or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties. The UN Sales Convention (UNCITRAL, CISG) shall not apply. Remedies under this agreement shall not be exclusive and notwithstanding anything in herein to the contrary, OI shall be entitled to all of the rights and remedies available to a contracting party under the Uniform Commercial Code. Failure by OI to insist upon strict performance of any of the terms and conditions hereof, or delay in exercising any rights or remedies provided herein, shall not release Supplier from any of the obligations hereunder and shall not be deemed a waiver of any rights of OI to insist upon strict performance thereof. In no event shall OI be liable for any special, indirect, or consequential damages, or for any lost profits, loss of business, or loss of opportunity.