

Standard Conditions of Purchase of Vietnam Limited

1. Order Placement

1.1 These standard conditions of purchase alone shall apply to any purchase of goods by Otto International (Hong Kong) Limited (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 are, as a general rule, to be made in writing. Verbal agreements shall be binding only if confirmed in writing by at least one party without delay, but within 48 hours at latest. If a written agreement is modified retrospectively, the written confirmation is to make explicit reference thereto.

1.3 As a general principle, orders are issued through electronic transmission.

1.4 Any company in the Otto International Group may pursue the OI claims against the Supplier.

1.5 These conditions will be updated from time to time; the Supplier will be informed in due time. The latest version will be applicable on the vendor portal.

2. Protection of Fair Competition

2.1 For the entire period during which the ordered goods are sold to the final customer, the Supplier is prohibited from supplying directly or indirectly to third parties any of the articles in the same form or a similar form or design that may cause confusion. Brand name articles that have not been specially 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 be divulged in any manner to any third party without the written consent of OI, except to the extent that the divulgence of such information shall become necessary for the Supplier to perform its obligations under this agreement or in any litigations concerning the provisions of this agreement.

3. Quality Guarantee

3.1 The articles ordered by OI must be supplied in a condition that fully corresponds to the samples, i.e. they must correspond to the description as well as those samples previously submitted and approved by OI 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 composition approved and released by OI shall be construed as guarantees of workmanship.

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

3.3 Any claim by OI against the Supplier for breach of warranty becomes time-barred within three years after the expiration of the year in which OI became aware or without gross negligence would have become aware of the identity of the obligor and the circumstances which constitutes the claim. Longer statutory limitation periods shall not be affected.

4. Prices

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

5. Packaging and Labeling

5.1 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.

5.2 Textiles must be labelled in compliance with the European Textile Labelling Act.

5.3 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.

6. Private labels, licensed brands

6.1 Delivering articles that the Supplier has manufactured specially for OI (such as private labels and licensed brands) to third-party buyers is forbidden both during and after termination of the supply contract.

6.2 The Supplier shall purchase the label, (hang) tags, and buttons to be used for textiles solely from the companies specified by OI. If the Supplier culpably violates this rule, OI 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.

6.3 In addition to 5.2, labelling specified by OI 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 5.3, the Supplier shall forward to OI in writing without undue delay any safety-related or adverse health complaints from customers or inquiries by authorities relating to the private label articles.

6.4 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 OI. The Supplier shall return the documents to OI with the final delivery.

6.5 The Supplier shall indemnify OI 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.

7. Period of Performance

7.1 All of our 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.

7.2 (a) Should the supplier be in default, OI shall be entitled to the statutory remedies. In particular, OI shall be entitled to demand compensation in lieu of performance and withdraw from the contract after having first given reasonable notice, to no avail. In such event, OI specifically has the right to make covering purchases and to charge the additional cost to the Supplier.

(b) In addition to the statutory remedies OI may demand from its Supplier the following penalties for late delivery as mutually agreed in the order:

For the first 10 days 2% of the total net order value

For day 11 until 15 6% of the total net order value

From day 16 and onwards 40% of the total net order value

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

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

7.5 Payment obligations of the Supplier in conjunction with orders placed by OI are always due immediately.

8. Place of Performance and Transport

8.1 If not agreed otherwise 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.

8.2 In addition to the expenses actually incurred for pick-up and delivery to the correct delivery address, OI can additionally charge a flat rate for incorrect delivery amounting to 100 Euros per incorrect delivery for delivery to an incorrect address or delivery of inaccurate Products.

9. 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.

10. 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.

11. Payment

11.1 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.

11.2 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.

11.3 For acceptance of goods under initial orders determination of the deadlines pursuant to Clause 11.2 shall commence on the agreed delivery date.

11.4 In the event of late delivery the number of days late shall be added on to the start of the deadlines under Clause 11.2.

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

11.6 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.

11.7 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.

12. Inter-company Offsetting

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

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

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

14. Duties of Inspections and Complaints

14.1 Independent of the final inspection to be performed by the Supplier pursuant to No. 3.2 herein, OI will conduct regular inspections of the goods in accordance with ISO 2859-1 (AQL sampling system). As regards the check to be performed by OI, the Supplier shall agree that only obvious defects are to be reported immediately; moreover, the notice of defect shall have been served within the correct period, if OI serves such notice within 14 days after discovering the defect.

14.2 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.

14.3 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.

15. Compliance with statutory provisions

15.1 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.

15.2 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.

15.3 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 to OI without infringing laws, directives and ordinances that come into force only at a later date.

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

15.5 Where the Supplier is aware that the goods are intended for delivery to another country, the supplier shall also be required to comply with this country's regulations in accordance with the provisions of paragraph 2 and paragraph 3.

15.6 The Supplier shall also undertake to adhere to the Otto Group Code of Conduct in its latest version, accessible online at the Vendor Portal.

15.7 In addition to the above the Supplier shall be in compliance with customer specifications as OI will introduce to the Supplier in a separate letter.

16. Warranty

16.1 The Supplier is liable for defects in quality or title, i.e. if the delivered goods do not conform with the sample, the quality requirements, the packaging and forwarding instructions, the material labeling provisions, or the care symbols, in case of non-compliances with the obligations pursuant to no.15 herein, missing article inserts, missing article labels and all those effects which are listed in 3.1.

The Supplier shall also be responsible to OI in the event that any published declarations/claims made in the advertising or on the labels prove to be incomplete or incorrect. This shall also apply to any missing, incorrect or incomplete directions for assembly.

16.2 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.

16.3 If the post-performance fails, OI shall be entitled, without any further serving of notice, to further reaching rights/claims to repudiation and compensation for damages caused in lieu of performance.

16.4 The statute of limitation for warranty claims shall be 2 years from the date of delivery to OI. Longer statutory limitation periods shall not be affected.

16.5 The statute of limitations will start again from the beginning for redeliveries of components or delivery of reworked components unless the Supplier has clearly acted on a goodwill basis.

16.6 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.

16.7 In the event the Supplier should refuse to accept the goods, OI shall be free to use the goods after having served reasonable notice. After deduction of the costs so incurred, OI shall be obliged to turn the proceeds over to the Supplier.

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

16.9 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.

16.10 For wear parts, which are subject to a shorter limitation period of the supplier, the supplier grants OI a limitation period, which is six months longer than the shorter limitation period granted to the end customer, if the end customer has exercised his rights of warranty within the shorter limitation period.

17. Usage rights

17.1 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 OI the simple (non-exclusive) rights, 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 rights to the data material to third parties.

17.2 OI may use the data material provided by the Supplier solely within the context of product advertising; in this respect.

17.3 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. OI 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).

17.4 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 OI before charging a claim against him and has to give him at least 14 days to remedy the situation.

17.5 OI is not required to name the creator of the data material when exercising the rights it has been granted.

17.6 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.

17.7 The Supplier shall indemnify OI on first request from claims asserted by third parties based on the contractual use of the transmitted data material.

18. Liability

18.1 Particularly as pertains to the provisions of the laws and regulations of the country of destination as specified in the relevant purchase order governing product safety, and within the scope of manufacturers' and product liability, the Supplier shall be fully liable for damages and consequential damages caused to the ultimate buyer. Upon request, the Supplier is under obligation to produce proof of compliance with the said legal requirements (certificate or seal of a testing agency) and, in the event of a prohibition order pursuant to the said provisions, must withdraw the article, notwithstanding the warranty period.

18.2 In addition, the Supplier shall hold OI harmless as regards any and all claims based on the respective country's provisions and reimburse OI for any and all damages it has incurred in conjunction with said provisions (e.g. recall costs, loss of interest, attorneys' fees etc.) unless the relevant product defect has not been caused by the Supplier. Besides the Supplier shall reimburse any resulting costs incurred by OI due to the inspection of the goods, determination of defects, sorting, retrofitting, expenses for product recall, loss of interest, lawyer's fees etc. against corresponding documentation. Any further statutory claims of OI to damages shall not be affected.

18.3 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 OI confirmation of coverage from the insurer on request

18.4 Insofar as the supplier is responsible for a claim based on product liability and/or a required product recall, the supplier is obliged to indemnify OI from third party damage claims, insofar as the claim was not settled with the third party by the supplier's product liability or product recall insurance. OI shall immediately inform the supplier regarding the assertion of such damage claims and shall not make any payments or accept any claims without consulting with the supplier; however, OI is not dependent on the approval of the supplier for making payments or accepting claims.

19. Industrial Property Rights

19.1 The Supplier explicitly warrants that selling and marketing the merchandise does not violate any third-party rights (copyrights, patents, utility patents or registered designs, trademarks, licenses, claims based on competition law etc.) and does not contravene any regulations issued by statutory or administrative bodies. No duty of compensation shall exist if the Supplier is able to prove that he is not responsible for the legal violation.

19.2 The Supplier is under obligation to hold OI and the companies associated with it harmless from any claims of third parties and to reimburse any damages beyond such claims, along with lost profits. The same shall apply in the event that the articles are offered and sold outside the country of destination unless the Supplier has drawn attention in the order confirmation to the fact that the goods he is offering are not to be sold in third countries.

19.3 A claim by OI against the Supplier for breach of warranty becomes time-barred within three years after the expiration of the year in which OI became aware or without gross negligence would have become aware of the identity of the obligor and the circumstances which constitute the claim. Besides claims because of the defect of title shall be subject of limitation pursuant to section 16.4. and 16.5.

19.4 Rights to drawings, samples and models that are given to the Supplier shall remain with OI and shall be treated confidentially. Such documentation is to be returned to OI with the final delivery. This shall also apply if a model has not been accepted.

19.5 The Supplier is liable for any abuse of patents. During and subsequent to the term of the supply contract, the Supplier is prohibited from supplying articles bearing trademarks belonging to OI or its licensors to third parties without the prior written consent of OI.

19.6 For each infringement of one of the supplier obligations listed in 19.1 and 19.4, OI shall be entitled to demand damages of EUR 10,000. The right to other more far reaching claims and entitlements shall remain in force.

19.7 Longer statutory limitation periods shall not be affected by the above rules. Any claims against the Supplier shall be asserted by OI, where applicable also on behalf of affiliated companies.

20. 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.

21. 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.

22. Nondisclosure

22.1 The Supplier shall not disclose any information or knowledge it obtains in connection with the placement of the order by OI or an affiliated company, and shall pass that obligation on to its employees and subcontractors.

22.2 That obligation will remain in effect for two years after the activity ends. If it is breached, the Supplier shall compensate for damages.

22.3 If the Supplier demonstrably breaches the nondisclosure obligation, OI may also terminate the contract without notice and without prejudice to other rights.

23. Place of Jurisdiction and Choice of Law

This agreement shall be governed by and construed in accordance with Hong Kong law. The UN Sales Convention (UNCITRAL, CISG) shall not apply.

Any dispute, controversy or claim arising out of or relating to this agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in Hong Kong under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one.

The arbitration proceedings shall be conducted in English.

The Arbitral Tribunal shall use its best efforts to produce a final and binding award within six months of appointment. The parties shall use their best efforts to assist the Arbitral Tribunal in achieving this objective, and the parties agree that this six month period shall only be extended in exceptional circumstances, which are to be determined by the Arbitral Tribunal in its absolute discretion.