

# General Terms and Conditions

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### 1) Scope of Application

**1.1** These General Terms and Conditions (hereinafter referred to as "GTC") of the company OCTO IT AG (hereinafter referred to as "Seller") shall apply to all contracts concluded between a consumer or a trader (hereinafter referred to as "Client") and the Seller relating to all goods and/or services presented in the Seller's online shop. The inclusion of the Client's own conditions is herewith objected to, unless other terms have been stipulated.

**1.2** These GTC apply accordingly to contracts for the delivery of goods with digital elements, unless otherwise provided. In this context, the Seller owes, in addition to the delivery of the goods, the provision of digital content or digital services (hereinafter "digital products") which are contained in or connected to the goods in such a way that the goods cannot fulfil their functions without them.

**1.3** These GTC shall apply accordingly to contracts for the supply of physical data carriers that serve exclusively as carriers of digital content unless something to the contrary is regulated in this respect. Digital content within the meaning of these GTC is data that is created and made available in digital form.

**1.4** A consumer pursuant to these GTC is any natural person concluding a legal transaction for a purpose attributed neither to a mainly commercial nor a self-employed occupational activity.

**1.5** A trader pursuant to these GTC is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his commercial or independent professional activity.

## **2) Conclusion of the Contract**

**2.1** The product descriptions in the Seller's online shop do not constitute binding offers on the part of the Seller, but merely serve the purpose of submitting a binding offer by the Client.

**2.2** The Client may submit the offer via the online order form integrated into the Seller's online shop. In doing so, after having placed the selected goods and/or services in the virtual basket and passed through the ordering process, and by clicking the button finalizing the order process, the Client submits a legally binding offer of contract with regard to the goods and/or services contained in the shopping cart.

**2.3** The Seller may accept the Client's offer within five days,

- by transferring a written order confirmation or an order confirmation in written form (fax or e-mail); insofar receipt of order confirmation by the Client is decisive, or
- by delivering ordered goods to the Client; insofar receipt of goods by the Client is decisive, or
- by requesting the Client to pay after he placed his order.

Provided that several of the aforementioned alternatives apply, the contract shall be concluded at the time when one of the aforementioned alternatives firstly occurs. Should the Seller not accept the Client's offer within the aforementioned period of time, this shall be deemed as rejecting the offer with the effect that the Client is no longer bound by his statement of intent.

**2.4** If a payment method offered by PayPal is selected, the payment will be processed by the payment service provider PayPal (Europe) S.à r.l. et Cie, S.C.A., 22-24 Boulevard Royal, L-2449 Luxembourg (hereinafter referred to as "PayPal"), subject to the PayPal Terms of Use, available at [https://www.paypal.com/de/webapps/mpp/ua/useragreement-full?locale.x=en\\_DE](https://www.paypal.com/de/webapps/mpp/ua/useragreement-full?locale.x=en_DE) or, if the Client does not have a PayPal account, subject to the Terms for payments without a PayPal account, available at <https://www.paypal.com/uk/webapps/mpp/ua/privacywax-full>. If the Client pays by means of a method of payment offered by PayPal which can be selected in the online order process, the Seller hereby declares the acceptance of the Client's offer at the time when the Client clicks on the button concluding the order process.

**2.5** If the Client chooses the payment method "Amazon Payments", payments are processed by the payment service provider Amazon Payments Europe S.C.A., 38 avenue John F. Kennedy, L-1855 Luxembourg (hereinafter referred to as „Amazon“).

If the Client chooses "Amazon Payments" as payment method during the online ordering process, he, at the same time, makes a payment order to Amazon when initiating the payment transaction by clicking the button finalizing the ordering process. In this case, the Seller declares his acceptance of the Client's offer at the time when the Client initiates the payment transaction by clicking the button finalizing the ordering process.

**2.6** When submitting an offer via the Seller's online order form, the text of the contract is stored by the Seller after the contract has been concluded and transmitted to the

Client in text form (e.g. e-mail, fax or letter) after the order has been sent. The Seller shall not make the contract text accessible beyond this.

**2.7** Prior to submitting a binding order via the Seller's online order form, the Client may recognize input errors by reading attentively the information displayed on the screen. The enlargement function of the browser to enlarge the display on the screen may be an effective method for better recognizing input errors.

The Client can correct all the data entered via the usual keyboard and mouse function during the electronic ordering process, until he clicks the button finalizing the ordering process.

**2.8** The German and the English language are exclusively available for the conclusion of the contract.

**2.9** Order processing and contacting usually takes place via e-mail and automated order processing. It is the Client's responsibility to ensure that the e-mail address he provides for the order processing is accurate so that e-mails sent by the Seller can be received at this address. In particular, it is the Client's responsibility, if SPAM filters are used, to ensure that all e-mails sent by the Seller or by third parties commissioned by the Seller with the order processing can be delivered.

### **3) Right to Cancel**

**3.1** Consumers are entitled to the right to cancel.

**3.2** Detailed information about the right to cancel are provided in the Seller's instruction on cancellation.

### **4) Prices and Payment Conditions**

**4.1** Unless otherwise stated in the Seller's product description, prices indicated are total prices including the statutory sales tax. Delivery costs, where appropriate, will be indicated separately in the respective product description

**4.2** Payment can be made using one of the methods mentioned in the Seller's online shop .

**4.3** If prepayment by bank transfer has been agreed upon, payment is due immediately after conclusion of the contract, unless the parties have arranged a later maturity date

### **5) Shipment and Delivery Conditions**

**5.1** If the Seller offers to ship the goods, delivery shall be made within the delivery area specified by the Seller to the delivery address specified by the Client unless otherwise agreed. When processing the transaction, the delivery address specified in the Seller's order processing shall be decisive.

**5.2** Should the assigned transport company return the goods to the Seller, because delivery to the Client was not possible, the Client bears the costs for the unsuccessful

dispatch. This shall not apply, if the Client exercises his right to cancel effectively, if the delivery cannot be made due to circumstances beyond the Client's control or if he has been temporarily impeded to receive the offered service, unless the Seller has notified the Client about the service for a reasonable time in advance.

**5.3** Personal collection is not possible for logistical reasons.

**5.4** Licence keys will be provided to the Client as follows:

- by e-mail
- by post

**5.5** The Seller reserves the right to withdraw from the contract in the event of incorrect or improper self-supply. This only applies if the Seller is not responsible for the non-supply and if he has concluded a concrete hedging transaction with the supplier. The Seller shall make all reasonable efforts to obtain the goods. In case of non-availability or partial availability of the goods he shall inform the Client and grant him immediately counterperformance.

## **6) Reservation of Proprietary Rights**

If the Seller provides advance deliveries, he retains title of ownership to the delivered goods, until the purchase price owed has been paid in full.

## **7) Warranty**

**7.1** Unless otherwise stipulated, the provisions of the statutory liability for defects shall apply. Deviating therefrom, the following shall apply to contracts for the delivery of goods:

**7.2** If the Client acts as trader

- the Seller may choose the type of subsequent performance,
- for new goods, the limitation period for claims for defects shall be one year from delivery of the goods,
- for used goods, the rights and claims for defects are excluded,
- the limitation period shall not recommence if a replacement delivery is made within the scope of liability for defects.

**7.3** If the Client acts as a consumer, the following applies to contracts for the delivery of used goods subject to the restriction of the following clause: The limitation period for claims for defects is one year from the delivery of the goods if this was expressly and separately contractually agreed between the parties and if the Client was specifically informed of the shortening of the limitation period before submitting his contractual declaration.

**7.4** The above-mentioned limitations of liability and shortening of the period of

limitation do not apply

- to claims for damages and reimbursement of expenses of the Client,
- if the Seller has fraudulently concealed the defect,
- for goods which have been used in accordance with their customary use for a building and which have caused its defectiveness,
- for any existing obligation of the Seller to provide updates for digital products with respect to contracts for the supply of goods with digital elements.

**7.5** Furthermore, for traders, the statutory limitation periods for any statutory right of recourse that may exist shall remain unaffected.

**7.6** If the Client is a businessperson pursuant to section 1 of the German Commercial Code (HGB) he has the commercial duty to examine the goods and notify the Seller of defects pursuant to section 377 HGB. Should the Client neglect the obligations of disclosure specified therein, the goods shall be deemed approved.

**7.7** If the Client acts as a consumer, the forwarding agent has to be immediately notified of any obvious transport damages and the Seller has to be informed accordingly. Should the Client fail to comply therewith, this shall not affect his statutory or contractual claims for defects.

## **8) Liability**

The Seller is liable to the Client for all contractual, quasi-contractual and legal, including tortious claims for damages and reimbursement of expenses as follows:

**8.1** The Seller is liable without limitation for any legal reason

- in the event of intent or gross negligence,
- in the event of intentional or negligent injury to life, body or health,
- due to a guarantee promise, unless otherwise regulated in this regard,
- due to mandatory liability such as under the German Product Liability Act (Produkthaftungsgesetz).

**8.2** If the Seller negligently breaches a material contractual obligation, liability is limited to the damage that is typical for the contract and foreseeable, unless unlimited liability applies in accordance with the above paragraph. Material contractual obligations are obligations that the contract imposes on the Seller in accordance with its content in order to achieve the purpose of the contract, the fulfillment of which makes the proper execution of the contract possible in the first place and on whose compliance the Client can regularly rely.

**8.3** Otherwise, liability on the part of the Seller is excluded.

**8.4** The above liability provisions also apply with regard to the liability of the Seller for his vicarious agents and legal representatives.

## **9) Applicable Law**

The law of the Federal Republic of Germany shall apply to all legal relationships between the parties under exclusion of the laws governing the international purchase of movable goods. For consumers, this choice of law only applies to the extent that the granted protection is not withdrawn by mandatory provisions of the law of the country, in which the consumer has his habitual residence.

## **10) Place of Jurisdiction**

If the Client is a businessman, a legal entity of public law or a separate estate under public law with its seat in the territory of the Federal Republic of Germany, the Seller's place of business shall be the sole place of jurisdiction for all legal disputes arising from this contract. If the Client is domiciled outside the territory of the Federal Republic of Germany, the Seller's place of business shall be the sole place of jurisdiction for all legal disputes arising from this contract provided that the contract or claims from the contract can be assigned to the Client's professional or commercial activities. In any event however, regarding the aforementioned cases the Seller is entitled to call the court responsible for the seat of the Client.

## **11) Code of conduct**

The Seller meets the quality standards of Trusted Shops, which can be viewed at [www.trustedshops.com/tsdocument/TS\\_QUALITY\\_CRITERIA\\_de.pdf](http://www.trustedshops.com/tsdocument/TS_QUALITY_CRITERIA_de.pdf)

## **12) Alternative dispute resolution**

The Seller is neither obliged nor prepared to attend a dispute settlement procedure before an alternative dispute resolution entity.