



Terms of Service for Partnerships (US)

1. Definitions

In these Otrium Terms of Service for Partnerships the following definitions apply:

Agreement: all agreements between Otrium and the Partner relating to the sale of the Products through the Marketplace and the logistical and fulfillment services provided by Otrium to the Partner thereunder, including the Order Form, these Otrium Terms of Service for Partnerships, the Supply Terms, as well as policies, schedules, appendices or annexes incorporated therein;

B2B Marketplace: Otrium's business-to-business Marketplace;

B2B Offer: has the meaning set out in Clause 14.1;

B2B Partnership Fee: has the meaning set out in Clause 14.8;

B2B Sale: has the meaning set out in Clause 14.1;

Commission: a commission for Otrium calculated as a percentage, as set out in the Order Form, of the Otrium sales price (sales price on the Marketplace excluding sales and use taxes, minus applicable customs charges) per Product sold and subsequently not validly returned;

Confidential information: has the meaning set out in Clause 17.1;

Customer(s): end customers;

Disclosing Party: has the meaning set out in Clause 17.2;

Final Stock List: has the meaning set out in Clause 9.4;

IP rights: the intellectual property rights of the Partner such as, but not limited to, trademarks, copyright, image rights, logos and brand names;

Marketplace: the marketplace provided by Otrium, which enables brand partners to sell their previous collections and factory outlet items directly to consumers, whereby Otrium offers amongst others online sales, storage and shipping;

Order Form: the marketplace and fulfillment order form signed by the Partner and Otrium.

Otrium: Otrium LLC, a limited liability company, incorporated and existing in accordance with the laws of Delaware, having its registered offices at 3500 South DuPont Highway, Dover, Delaware, Country of Kent, 19901, United States and registered with the Companies Register of the State of Delaware under Company Registration Number 5049825;

Otrium Group: has the meaning set out in Clause 19;

Otrium Partner Platform: has the meaning set out in Clause 9.9;

Parties: the Partner and Otrium together, and each a "Party";

Partner: the legal entity set out in the Order Form that wishes Otrium to facilitate the sale of selected items of any of its brands to Customers through the Marketplace as well as the fulfilment of all orders made through the Marketplace;

Partnership Service Fee: a service fee payable by the Partner for Otrium's services under the Agreement, as set out in Clause 11;

Product(s): fashion items of any of the Partner's brands set out in the Order Form, such as clothing, shoes, handbags and other accessories, selected by the Partner;

Purchase Agreement: has the meaning set out in Clause 14.4;

Receiving Party: has the meaning set out in Clause 17.2;

Scanned Unannounced Stock: has the meaning set out in Clause 9.4;

Supply Terms: the terms set out in Otrium Supply Terms available at legal.otrium.com/us-partnership-terms#supply-terms, as amended from time to time;

Unscannable Stock: has the meaning set out in Clause 9.4; and

Warehouse: any of Otrium's warehouses.

2. Update and amendment of these Terms of Service

2.1. Otrium has the right to update, revise or amend the Otrium Terms of Service for Partnerships and the Supply Terms at any time, in which case it will provide the Partner with reasonable prior notice and the updated Terms of Service for Partnerships from time to time.

2.2. Unless the notice states otherwise, the updated terms will become effective and binding on the next business day after the provision to the Partner. The Partner's continued use of Otrium's Marketplace and services after such changes enter into force constitutes the Partner's acceptance of the new Otrium Terms of Service for Partnerships and the Supply Terms, which shall be binding on the Partner.

2.3. If you do not agree to such update, you must notify us within fourteen (14) calendar days of the date the

- amendment becomes effective.
- 2.4. These Otrium Terms of Service for Partnerships were last updated in the date indicated at the bottom.

3. Purpose of the cooperation

- 3.1. By opening a sales channel on Otrium, the Partner will gain access to Otrium's community of Customers.
- 3.2. Otrium will be allowed to offer the Products for sale in the United States. Partner shall procure the marketability of the Products in the United States in such manner that the locally required specifications of the Products are complied with, including, product labeling, product information and product safety.
- 3.3. Subject to the terms of the Agreement, Otrium will sell the Products that the Partner, at its own discretion, makes available for sale on the Marketplace, directly to a Customer who has initiated a transaction in respect of such Product on any Otrium website(s) or through any Otrium mobile app. The Parties agree that, until the Products are sold through the Marketplace to the Customers, the Partner shall remain at all times the sole owner of the Products.
- 3.4. Otrium is an independent contractor of the Partner and nothing herein restricts Otrium from carrying on its business for other retailers and (potential) competitors of the Partner.
- 3.5. The Partner shall, and shall procure that its directors, officers and other representatives, suppliers and service providers shall, comply with the principles set forth in Otrium's Code of Conduct available at legal.otrium.com/us-partnership-terms#code-of-conduct and available Otrium's Fur Free Policy available at legal.otrium.com/us-partnership-terms#fur-free-policy, as amended from time to time.

4. Marketing and promotion

- 4.1. While the Products are available for sale through the Marketplace, Otrium has the right to use the IP rights to facilitate the marketing, promotion, and sale of the Products through its digital platforms and mobile apps. Otrium is authorized to display the Products in the public domain and to use campaign visuals of the brand(s), provided such campaign visuals have been provided by the Partner.
- 4.2. The Partner represents and warrants that it has all the necessary IP rights to enable use of such IP rights by Otrium for purposes of the Agreement.
- 4.3. The Partner shall supply to Otrium brand visuals of the Products offered on the Marketplace, including the associated lookbook and campaign visuals and all other materials that may sustain the sale of the Products.

5. Pricing of Products

- 5.1. Customer pricing of Products will be established

through Otrium's Smart Pricing tool which sets the optimal discounts and prices for the Products of the Partner. Smart Pricing may involve changes in discounted prices, special offers, coupons, vouchers or other incentives to account for costs and sell the Products at the optimal price.

- 5.2. Otrium may apply and add a surcharge for the account of the Customer to the sales price to compensate for any and all applicable customs charges in relation to an order of Products by such Customer.

6. Customer service

- 6.1. Otrium provides Customer service through social media, telephone, email and other channels.
- 6.2. Otrium undertakes to adequately answer reasonable Customers' questions and to respond to complaints of Customers who have bought Products on the Marketplace.

7. Fulfilment and logistical services

- 7.1. Otrium is responsible for the movement, storage and transportation of the Products in each Warehouse. Otrium will keep the Products stored in a manner befitting the Products and in accordance with prevailing industry standards.
- 7.2. The Partner shall deliver the Products to the Warehouses set out in the Order Form as designated by Otrium for that purpose. Any such delivery will be at the Partner's cost, except for the first drop of Products by the Partner whereby Otrium will (a) pick up the Products from any mutually agreed venue and (b) transport the Products from any such venue to its warehouse free of charge.
- 7.3. Otrium may transfer the stored Products between its Warehouses, wherever located in the United States, if Otrium deems this necessary for maintaining adequate stock levels, improving its services and/or advancing sales of the Products. In addition, Otrium may temporarily store Products returned by Customers in any of its Warehouses.
- 7.4. Otrium fulfills logistical services in connection with the sale and delivery to the Customer, including receiving, counting (inbound), scanning, storing, picking, packing, return handling and delivery to the Customers.
- 7.5. Otrium is responsible for collecting payments by Customers.
- 7.6. The Partner may request Otrium in writing to return any unsold stock at the Partner's expense. If the Partner submits such request within eighteen (18) months as from the date of this Agreement, the Partner shall reimburse to Otrium any costs in relation to the transport of the first drop of Products as referred to in the second sentence of Clause 7.2.

8. Ownership of the Products

- 8.1. The Partner declares that its Products in the Warehouse are its property and are unencumbered.
- 8.2. The Partner retains legal ownership of the Products until such Products are sold to Customers, at which moment such Product is considered purchased by Otrium from the Partner and ownership transfers from the Partner to Otrium. If a Product is returned by the Customer to Otrium, the Partner will regain ownership of such Product upon receipt of the returned Product by Otrium in its Warehouse.

9. Otrium's receiving process and assessment of Products

- 9.1. The Partner shall supply Products and information to Otrium in accordance with the terms of the Agreement, including the Supply Terms, which are an integral part of the Agreement. If a breach by the Partner of the obligation set out in the previous sentence is in relation to any Product delivered at the Warehouse, Otrium has the right, at its sole discretion, to return such Product at the Partner's expense.
- 9.2. Upon supplying the Products, the Partner shall procure that all information and documentation in respect of the Products, as required for import to or export from any state within the United States from or to any other states within the United States, is delivered to Otrium in a complete and correct manner, and *only if applicable*, is also delivered for export from the United States to the European Union or the United Kingdom and/or for import from the European Union or the United Kingdom to the United States. In the event that the Partner fails to provide information and/or documentation reasonably required by Otrium, Otrium shall in all events be free to reject Products supplied by Partner and suspend the provision of its services provided to the Partner under the Agreement.
- 9.3. Upon delivery of the Products, Otrium undertakes to count and scan such Products.
- 9.4. After the scanning process, Otrium will deliver to the Partner a final stock list in the form of:
 - (a) a drop report, containing an overview of all scanned Products identifiable on the basis of the barcodes and other information made available by the Partner to Otrium in accordance with the Supply Terms; and
 - (b) if applicable, a leftover report, including (i) any scanned stock that can currently not be identified on the basis of the information made available by the Partner to Otrium ("**Scanned Unannounced Stock**") and (ii) any unscannable and therefore unidentifiable stock ("**Unscannable Stock**"), (together, the "**Final Stock List**").
- 9.5. The Final Stock List is considered to be the final list of Products received and stored by Otrium under the

Agreement. This Final Stock List will also be used for invoicing purposes and shall be binding upon the Parties, unless the Partner notifies Otrium within one (1) week after receipt of the Final Stock List that the quantities set out therein are not in line with the Partner's expectations of the Final Stock List. In such case, the Parties shall work together in good faith to resolve the matter and if needed upon agreement between the Parties, Otrium will deliver to the Partner a revised Final Stock List.

- 9.6. Otrium will offer the Products that are part of the Scanned Unannounced Stock for sale after the Partner provided to Otrium the missing information needed to identify and enable the sale of such stock, as set out in the Supply Terms. If the Partner has within two (2) weeks as from the receipt of the Final Stock List not provided such missing information to Otrium, Otrium has the right, at its sole discretion, unless the Partner has notified Otrium to return such stock to the Partner at the Partner's cost, (a) to immediately initiate a B2B Sale with respect to such Scanned Unannounced Stock in accordance with Clause 14 or (b) to donate such Scanned Unannounced Stock to charity or any of Otrium's recycling partners.
- 9.7. Unless the Partner has within two (2) weeks as from the receipt of the Final Stock List notified Otrium to return the Unscannable Stock to the Partner at the Partner's cost, Otrium has the right, at its sole discretion, (a) to immediately initiate a B2B Sale with respect to Unscannable Stock in accordance with Clause 14 or (b) to donate any Unscannable Stock to charity or any of Otrium's recycling partners.
- 9.8. The Partner may at all times request Otrium to deliver, at the Partner's cost, a stock list on the basis of a new physical inventory count containing an overview of all stored Products, which shall include an overview of Products sold.
- 9.9. The Partner will have full access to Otrium's online Partner Platform (the "**Otrium Partner Platform**"), providing the Partner with amongst others an overview of its inventory.
- 9.10. Upon return of unsold or returned Products to the Partner, a shrinkage deviation of up to 1% from the aggregate number of items on any of the Final Stock Lists shall at all times be accepted by the Partner. Otrium shall be responsible for any shrinkage above 1%, it being understood that the value of any such excess lost stock shall be equal to the lowest discounted sales price on the Marketplace minus Otrium's Service Fee.

10. Insurance

All scannable Products on the Final Stock List are insured on market terms by Otrium, providing coverage in accordance with any applicable

insurance policy in which Otrium is an insured party, such as for certain events in connection with the loss and damage of the Products during transport and storage. Products are insured at the average discounted sales price on the Marketplace (excluding taxes) minus Otrium's Service Fee.

11. Partnership Service Fee

11.1. Otrium shall be entitled to the Partnership Service Fee.

11.2. The Partnership Service Fee consists of the Commission and covers use of the Marketplace and the fulfilment and logistical services as listed below:

- (a) storage of Products in Otrium's Warehouse(s);
- (b) certain outbound logistical services in connection with the sale and delivery of Products to Customers; and
- (c) the handling of returns of Products from Customers,

all in accordance with this Agreement. For the avoidance of doubt, the Partnership Service Fee does not cover any additional charges by Otrium to Partner in accordance with Clause 7.6, Clause 9.6, Clause 9.7, Clause 9.8, Clause 12.1, Clause 12.2, Clause 14 or Clause 15.2.

12. Value added services

12.1. If Products do not comply with the Supply Terms or require additional value added services (upon delivery by the Partner, upon return of any Products by a Customer or otherwise), Otrium has the right (i) to provide such value added services in relation to the Products as Otrium, at its sole discretion, deems reasonably necessary to enable the sale of the Products through the Marketplace and (ii) to charge additional fees to the Partner for the performance of such services on the basis of the prices listed on legal.otrium.com/us-partnership-terms#vas-rate-table-us or the Otrium Partner Platform or as otherwise provided to the Partner by Otrium at the time of provision of these services. These charges will be invoiced separately and set-off against the self-bill referred to in Clause 13.

12.2. If visuals are incomplete upon receipt of Products at the Warehouse, Otrium has the right to provide photography services in relation to such Products in accordance with the following arrangement:

- (a) Otrium is allowed to provide photography services without the prior consent of the Partner up to 1% of the retail value per drop, which costs will automatically be set off against the self-bill;
- (b) for any photography costs in excess 1% of the retail value per drop, Otrium will send a notice to the Partner to obtain prior approval to proceed with the required services and in the event no response is received from the Partner

within two (2) business days after the notice was sent, Otrium shall proceed with the required photography services, which will subsequently be set off against the self-bill; and

- (c) Otrium may determine at its sole discretion which type of photography is most suitable for the Products in question based on retail value and category and will select between the following options.

13. Invoicing

13.1. Otrium will issue a self-bill (invoice issued by the recipient) on behalf of the Partner for the amounts to be paid by Otrium to the Partner pursuant to sales on the Marketplace. The Partner hereby agrees on self-billing on its behalf for the sales made each month. The Partner will receive the self-bill for all sales made within a relevant month. The self-bill is shared with the Partner ultimately on the 20th (twentieth) calendar day after each month. The self-bill will be attached by an invoice specification, consisting of the Otrium sales price of the Products and the total amount of the sales. For Partner's convenience, the specification will also state the sales information of Otrium in relation to Products sold and subsequently returned, which consists of the sales value of the Products, the Service Fee and any additional incurred fees. Otrium applies a payment period of seven (7) calendar days.

13.2. In case Partner is of the view that a self-bill invoice does either not meet any of the formal requirements or that the tax treatment applied is incorrect, Partner will inform Otrium accordingly within one (1) month. In case the self-bill requires adjustment, Otrium will issue a credit note and a revised self-bill on Partner's behalf as soon as reasonably possible.

13.3. Any services provided by Otrium will be invoiced separately and set-off against the payment of the self-bill, including for any fulfillment and logistical services provided by Otrium, except where such services do not have a separate price.

13.4. Based on the product information as provided by the Partner, Otrium will charge, collect and remit permitted taxes for sales to the final consumer. The Partner represents and warrants that any and all information provided by it in respect of the Partner items is true, accurate and complete, as Otrium will rely upon such information to charge the correct percentages and amounts of tax. No tax is expected to be owed from Otrium the Partner for sales to the final consumer. The Parties acknowledge and agree that Otrium will be using Avalara as a tax tool for determining the permitted taxes.

13.5. Should Partner not meet the requirements as set out in this Clause 13 (*Invoicing*), Partner shall be liable for any tax consequences, fines damages and other costs due by Otrium as a result of not or not in time

- meeting these requirements.
- 13.6. All payments under the Agreement shall be made in United States Dollar (USD).

14. B2B Marketplace

- 14.1. Further to the sale of Products to consumers through the Marketplace, the Parties agree that Otrium shall be allowed to offer Products for sale to any stock buyer through the B2B Marketplace (each such offer, a “**B2B Offer**”, and each such sale, a “**B2B Sale**”) on the conditions as included in this Clause 14, it being understood that this is without prejudice to the Partner’s right to request Otrium to return any unsold stock in accordance with Clause 7.6.
- 14.2. Otrium has the right to initiate any B2B Sale in respect of Products, by making a B2B Offer to any stock buyer (a) with respect to any Products that have been stored in Otrium’s Warehouse for longer than six (6) months or (b) at the Partner’s request. Without prejudice to Clause 7.6, the Partner shall support and use its best efforts to procure such B2B Sale initiated by Otrium. In the event a B2B Sale is initiated, Otrium shall be allowed to no longer offer the relevant Products for sale through the Marketplace. For the avoidance of doubt, Otrium shall not initiate any B2B Sale without the prior written consent of Partner with respect to any Products that have been stored in Otrium’s Warehouse for shorter than six (6) months.
- 14.3. If Otrium notifies the Partner that it wishes to initiate a B2B Sale in accordance with Clause 14.2 or if the Partner requests Otrium to initiate a B2B Sale, the Partner shall as soon as reasonably possible after such notification provide Otrium with target prices to be referenced on the B2B Marketplace with respect to any Products that Otrium expects to include in the B2B Offer.
- 14.4. The purchase price and other conditions for the sale of the Products part of any B2B Sale shall exclusively be agreed between any stock buyer and the Partner by the conclusion between such parties of a purchase agreement without Otrium’s involvement, upon receipt of any offer made by any such stock buyer through the B2B Marketplace (the “**Purchase Agreement**”).
- 14.5. The sale and purchase of Products through the B2B Marketplace takes place by the execution of the Purchase Agreement between Partner and any stock buyer to that effect. For convenience purposes, a template of a purchase agreement between the Partner and a stock buyer can be provided by Otrium. Otrium shall explicitly not be involved in the discussions, negotiations, review and conclusion of the Purchase Agreement. Otrium does not accept any responsibility with respect to the B2B Sale conditions agreed upon between the Partner and any

stock buyer, and any potential legal consequences in relation to any B2B Sale are therefore solely for the account of the Partner and the relevant stock buyer.

- 14.6. The Partner shall pay a storage fee of USD 0.01 excluding sales and use taxes per Product per day for Products that have been stored in Otrium’s Warehouse for longer than twelve (12) months and not yet sold through the Marketplace or the B2B Marketplace. This storage fee is reviewed by Otrium on a quarterly basis and updated based on inflation. In addition, Otrium may at any time amend this storage fee unilaterally in relation to costs imposed on Otrium for services carried out by any of Otrium’s fulfilment partners and any changes thereto. Any such amendments will be posted and made available to the Partner on the Otrium Partner Platform or will be otherwise provided to the Partner by Otrium.
- 14.7. With respect to any Products that have been stored in Otrium’s Warehouse for longer than eighteen (18) months and have not been sold through the Marketplace or the B2B Marketplace, Otrium shall have the right to donate such Products to (i) charity or (ii) any of Otrium’s recycling partners, at the Partner’s reasonable cost, provided that Otrium shall inform the Partner of its intention to that extent at least one (1) week prior to donating such Products and having given the Partner reasonable opportunity to object against Otrium donating such Products. In the event the Partner objects to Otrium donating such Products in accordance with this paragraph within one (1) week of Otrium’s notification to that effect, the Partner may request Otrium to return such Products to the Partner at the Partner’s cost.
- 14.8. In connection with any B2B Sale, the use of the B2B Marketplace and certain logistical services provided by Otrium in relation thereto, Otrium shall be entitled to a service fee from Partner in accordance with the following structure:
- (a) a commission for Otrium calculated as 10% (ten percent) of the sales price excluding sales and use taxes agreed in any Purchase Agreement; and
 - (b) USD 1.50 (one dollar and fifty cents) excluding sales and use taxes per Product sold for outgoing warehouse processing costs, (the “**B2B Partnership Service Fee**”). For the avoidance of doubt, the Commission as referred to in Clause 11.2 does not apply to a B2B Sale.
- 14.9. All figures listed in Clause 14.8(b) are reviewed by Otrium on a quarterly basis and updated based on inflation. In addition, Otrium may at any time amend or add such fees unilaterally in relation to costs imposed on Otrium for services carried out by any of Otrium’s fulfilment partners and any changes thereto. Any such amendments will be posted and made available to the Partner on the Otrium Partner

- Platform or will be otherwise provided to the Partner by Otrium.
- 14.10. The Partner will issue an invoice to the relevant stock buyer for the payment by such stock buyer of an amount equal to the purchase price of the Products sold pursuant to the Purchase Agreement. If agreed between the Parties, Otrium is authorized to receive such purchase price on its bank account on behalf of the Partner. Otrium will in connection with a B2B Sale issue an invoice to the Partner for the payment by the Partner of an amount equal to the B2B Service Fee.
- 14.11. If and in so far Otrium acts as a mediator or as an authorized representative in performing its services related to any B2B Sale, Otrium shall not be liable for any such acts. The Partner indemnifies, defends and holds Otrium harmless from and against any claims, costs, losses, liabilities, penalties and/or damage which Otrium incurs in relation to claims from third parties related to or arising from the Purchase Agreement.
- 14.12. The Partner represents and warrants to Otrium that it complies, and shall comply, with all applicable laws and regulations, including data protection and antitrust laws, when engaging and dealing with stock buyers through the B2B Marketplace, and Partner shall use its best efforts to procure that stock buyers shall do the same; provided further that Partner indemnifies, defends and hold Otrium harmless from and against any claims, costs, losses, liabilities, penalties and/or damage which Otrium incurs in relation to violations thereof by the Partner.
- 14.13. The Parties agree that, until the Products are sold through the Marketplace or the B2B Marketplace, the Partner shall remain at all times the sole owner of the Products. In case of a B2B Sale through the Purchase Agreement, the Partner retains legal ownership of the Products involved until such Products are sold to the stock buyer, at which moment such Products are considered purchased by the stock buyer from the Partner and ownership transfers from the Partner to the stock buyer.

15. Term and termination

- 15.1. The Agreement is entered into for an indefinite term.
- 15.2. If either Party notifies the other Party in writing that wants to terminate the Agreement in accordance with this Clause 15.2, the Agreement will terminate at midnight at the end of the first (1st) month after the day the other Party receives that notice. Otrium may terminate the Agreement with immediate effect in case of a breach of Clause 3.5. Upon termination Otrium will, at the cost of the Partner, return any unsold Products to the Partner. If the Agreement is terminated within eighteen (18) months as from the date of this Agreement, the Partner shall reimburse to Otrium the costs in relation to the transport of the

- first drop of Products as referred to in Clause 7.2.
- 15.3. The Partner agrees that, after termination in accordance with the provisions of these Otrium Terms of Service for Partnerships, Otrium shall be entitled to fulfill any outstanding final Customer orders of Products.
- 15.4. Upon termination, all previously earned amounts that are due and payable to Otrium will be paid to Otrium and all amounts due and payable to the Partner will be paid to the Partner in accordance with Clause 13 (*Invoicing*).
- 15.5. Upon termination, all rights to any IP rights as contained in Clause 4 (*Marketing and promotion*) will terminate immediately, save for use necessary for the fulfillment of any remaining obligations. All confidentiality provisions will survive the termination of the Agreement.
- 15.6. Upon termination, all Confidential Information as defined below will be returned to the respective Party.
- 15.7. The accrued rights and obligations of each Party at termination, Clause 8.2, Clause 9.10, Clause 11, Clause 12.1, 13, 14.8, 14.9, 14.13, and Clauses 15 through 21 shall survive any termination of the Agreement pursuant to Clause 2.3 or this Clause 15 and continue in full force and effect.

16. Liability and Indemnification

- 16.1. Otrium is not liable for any damages or other liability relating to a Product as a consequence of hidden defects and/or manufacturing errors, nor for damage that is attributable to the Partner. The Partner agrees to defend, indemnify and hold Otrium harmless from and against any claims of Customers or any third party in relation to the Products sold pursuant to the Agreement, including claimed infringements of third party intellectual property rights in the Products or materials provided by the Partner hereunder.
- 16.2. The Partner agrees to defend, indemnify and hold Otrium harmless from and against any liability and/or damages as a consequence of any information or documentation provided to Otrium or its service providers being incorrect, infringing, incomplete or misleading.
- 16.3. If the Partner has not met the requirements as set out above in Clause 13 (*Invoicing*), the Partner shall be liable for any tax consequences, fines, damages and other costs due by Otrium as a result thereof.
- 16.4. Otrium will handle any claims made by Customers in relation to the logistics and fulfilment of the Products. Otrium agrees to defend and indemnify Partner from and against any third party claims made by Customers solely to the extent arising as a direct result of Otrium's negligence or willful misconduct in connection with the logistics and fulfilment of the Products after the delivery by the Partner to Otrium's warehouse.

- 16.5. The indemnified party shall (i) give written notice to the indemnifying party promptly after learning of a relevant claim, (ii) tender the defense and settlement of the claim to the indemnifying party (provided that the indemnifying party may not settle any claim without the indemnified party's prior written consent, not to be unreasonably withheld, conditioned or delayed), and (iii) provide the indemnifying party with reasonable assistance, at the indemnifying party's reasonable expense, in connection with the defense and settlement of such claim.
- 16.6. Except in case of gross negligence or willful misconduct, Otrium will not be liable towards the Partner for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of profit, nor will the liability of Otrium for damages incurred by the Partner exceed the total amount paid to Otrium under the Agreement in the twelve (12) months leading up to the damage causing event. Notwithstanding the previous sentence, Otrium's liability for any loss and damage of the Products as a result of any occurrence or event which gives rise to a valid claim under any of the insurance policies as referred to in Clause 10 (*Insurance*) in which Otrium is an insured party, shall in any event be limited to any amount actually recovered under these insurance policies.

17. Confidentiality

- 17.1. Under the Agreement, "**Confidential Information**" means any and all information disclosed by one Party to the other under or pursuant to the Agreement, whatever its nature (technical, commercial, legal, financial, personal or any other) and whether in written, oral, visual form, electronically or any other form of communication that may be chosen by the Disclosing Party during the term of the Agreement, which is not generally available to others. Confidential Information includes, without limitation, information relating to Disclosing Party's ongoing or proposed business, products or services such as product specifications, proposals, financial and technical information, samples, plans, patents, trademarks, drawings, models, designs, specifications, software (in object or source code) and related documentation. The Parties acknowledge that the content of the Agreement shall be considered as Confidential Information.
- 17.2. Under the Agreement, "**Receiving Party**" or "**Disclosing Party**" means the Party who receives or discloses, as applicable, Confidential Information during the term of the Agreement.
- 17.3. Under the Agreement, any Receiving Party undertakes with the Disclosing Party for the entire duration of the Agreement and for a period of five (5) years from the date of termination/expiration of the Agreement:
- (a) to protect and keep the Confidential Information as strictly confidential, and to apply to it the same protection that it provides to its own confidential information;
- (b) to disclose the Confidential Information exclusively to its own employees who have a clear need to know the Confidential Information for the Agreement, and to ensure that such personnel are informed of, and abide by, the present confidentiality obligations;
- (c) not to disclose the Confidential Information to any third party without having first obtained the Disclosing Party's written consent to such disclosure, which consent may be subject to the conclusion of a confidentiality agreement between the Disclosing Party and such third party; and
- (d) not to copy or reproduce the Confidential Information, in whole or in part, except those that are strictly necessary to carry out the Agreement.
- 17.4. The Receiving Party will have no obligation with respect to information which the Receiving Party can prove in writing:
- (a) is, or subsequently becomes, legally and publicly available without any breach by it of the Agreement;
- (b) was rightfully in possession of, or known to, the Receiving Party, which can be demonstrated by the Receiving Party's internal documents;
- (c) is rightfully obtained by the Receiving Party from a third party not committed by any obligation of confidentiality towards the Disclosing Party;
- (d) was independently developed by the Receiving Party without access to or use of the Confidential Information of the Disclosing Party; or
- (e) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party.
- 17.5. In addition, the Receiving Party may disclose Confidential Information that is required to be disclosed by order of a court of competent jurisdiction, or by order of a governmental agency or legislative body under any written law, regulation or legal order, provided that the Receiving Party promptly notify the Disclosing Party thereof.

18. Warranties; disclaimer

- 18.1. Each Party represents and warrants that:
- (a) it is an entity duly organized, validly existing, and in good standing (where such concept is recognized under applicable law) under the laws of its place of incorporation and has full corporate power and authority to conduct its businesses with which it is now engaged;

- (b) it has full corporate power and authority to execute and deliver the Order Form, and to perform all of its obligations thereunder, and no consent or approval of any other person or body is required therefor; and
 - (c) it will comply with all applicable laws and regulations with respect to its activities under the Agreement.
- 18.2. Except as expressly provided in these Otrium Terms of Service for Partnerships, Otrium disclaims all representations or warranties of any kind whatsoever with respect to the Marketplace, express or implied, including any implied warranties of merchantability, fitness for a particular purpose and non-infringement, and any warranties arising from course of dealing or usage of trade.

19. Assignment to Group Company

Neither Party may assign or transfer the Agreement to a third party; provided that each Party may assign the Agreement as a whole in connection with a merger, acquisition or sale of all or substantially all of its business or assets related to this Agreement. In addition, Otrium may, at any time during the term hereof, assign the Agreement or any part thereof to any other member of the Otrium Group under the condition that, if such assignee, following such assignment, ceases to be a member of the Otrium Group, Otrium shall procure that such assignee shall assign all of its rights and benefits under the Agreement back to Otrium or to another member of the Otrium Group prior to the assignee ceasing to be a member of the Otrium Group. "**Otrium Group**" means Otrium, its parent entity, its parent's subsidiaries and subsidiary undertakings from time to time.

20. Miscellaneous

- 20.1. The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- 20.2. In the event any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect.
- 20.3. Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing, addressed to that Party at its principal

place of business or such other address as that Party may have specified to the other Party in writing in accordance with this Clause 20.3, and may be delivered personally, sent by pre-paid first class mail or other next working day delivery service or commercial courier or via email.

- 20.4. Any reference in these Otrium Terms of Service for Partnerships to a Clause or Schedule is to the relevant Clause or Schedule to these Otrium Terms of Service for Partnerships and any reference to a Paragraph is to the relevant Paragraph of the relevant Schedule.
- 20.5. The Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Parties may enter into the Agreement by signing any such counterpart.
- 20.6. No purported modification of the Agreement by the Partner or any terms of conditions of any purchase order or other similar effect shall have any force or effect regardless of any statement to the contrary in such modification, purchase order or other document. In the event of any conflict between a provision of the general terms and conditions of the Partner (in case such have been accepted by Otrium in writing) and a provision of the Order Form, Otrium Terms of Service for Partnerships, including any Otrium policies referenced therein, or the Supply Terms, the relevant provision of the latter shall prevail over such general terms and conditions of the Partner.
- 20.7. The Order Form together with the Otrium Terms of Service for Partnerships, including any Otrium policies referenced therein, and the Otrium Supply Terms, constitutes the complete and exclusive agreement between the Parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understanding, written or oral, concerning the subject matter.

21. Governing law and jurisdiction

- 21.1. The Agreement and any contractual or non-contractual obligations arising out of or in connection with it are governed and construed by the laws of Delaware, the United States.
- 21.2. All disputes arising out of or in connection with the Agreement shall be exclusively resolved by the competent court in Delaware, the United States.

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