

# Otrium

## TERMS OF SERVICE FOR PARTNERSHIPS (EU)

### 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 Marketplaces and the logistics and fulfilment 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 Buyer:** any third-party stock buyer or jobber;

**B2B Clearance Transaction:** has the meaning set out in Clause 13.1;

**B2B Commission:** has the meaning set out in Clause 13.4(a);

**B2B Direct Transaction:** has the meaning set out in Clause 13.1;

**B2B Marketplace:** the business-to-business marketplace provided by Otrium, which enables the sale of brand partners' previous collections and factory outlet items to B2B Buyers;

**B2B Outbound Costs:** any costs and expenses in relation to moving any Product from the Warehouse to the Partner or a third party other than to a consumer following a sale on the B2C Marketplace, including, but not limited to, costs and expenses in relation to (i) picking Products from inventory in the Warehouse, (ii) packing as preparation for shipment (including applying specific packing requirements upon request by the Partner that Otrium may, at its sole and absolute discretion, accept or reject), (iii) loading the Products for transportation; (iv) the transport of the Products; (v) the unloading of the Products at the loading dock of the Partner or the relevant third party; and (vi) the customs clearance of the Products, including the customs duties payable in relation to the export and the import of the Products;

**B2B Partnership Service Fees:** means the fees payable by the Partner to Otrium (i) for the B2B Clearance Transaction as set out in Clause 13.4, consisting of the B2B Commission and the P&P Fees; and (ii) for the B2B Direct Transaction as set out in Clause 13.5(a), consisting of the B2B Commission and P&P Fees, unless Otrium does not incur P&P Fees, in which case such fees are limited to the B2B Commission.

**B2B Transaction:** has the meaning set out in Clause 13.1;

**B2B Self-Bill:** has the meaning set out in Clause 15.1;

**B2C Commission:** a commission for Otrium per Product sold and subsequently not validly returned, calculated as a percentage, as set out in the Order Form, of the Otrium sales price of the Product on the B2C Marketplace excluding VAT;

**B2C Fixed Fees:** the fixed fees as set out in Clause 11.3 for certain fulfilment and logistics services arranged by Otrium;

**B2C Marketplace:** the business-to-consumer

marketplace provided by Otrium, which enables the sale of brand partners' previous collections and factory outlet items directly to consumers, where Otrium offers amongst others online sales, storage, fulfilment, and shipping;

**B2C Partnership Service Fees:** means the fees payable by the Partner to Otrium as set out in Clause 11.2, consisting of the B2C Commission and the B2C Fixed Fees together, and, for the avoidance of doubt, the B2C Partnership Service Fees do not apply to the B2B Transaction;

**B2C Self-Bill:** has the meaning set out in Clause 15.1;

**Confidential information:** has the meaning set out in Clause 19.1;

**Customer(s):** end customers;

**Disclosing Party:** has the meaning set out in Clause 19.1;

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

**Inbound Delivery Costs:** any costs and expenses in relation to moving the Products from a third-party location to the Warehouse, including, but not limited to, costs and expenses in relation to (i) picking Products from the Partner's inventory (to the extent practically possible, organised per stock keeping unit), (ii) packing as preparation for shipment, (iii) loading the Products for transportation, (iv) the transport of the Products; and (v) the unloading of the Products at the loading dock of the Warehouse; and (vi) the customs clearance of the Products, including the customs duties payable in relation to the export and the import of the Products;

**Indemnified Associates:** Otrium's officers, directors, employees, shareholders, parents, subsidiaries, agents, successors, and assigns;

**IP rights:** the intellectual property rights of the Partner, including, but not limited to, brand names, copyrights, image rights, logos, patents, rights in mask works, trademarks, and trade secrets;

**Marketplaces:** the B2B Marketplace and the B2C Marketplace;

**Order Form:** the marketplace and fulfilment order form signed by the Partner and Otrium which references these Otrium Terms of Service for Partnerships from time to time;

**Otrium:** Otrium B.V., a private limited liability company, incorporated and existing in accordance with the laws of the Netherlands, with corporate seat in Amsterdam, the Netherlands, and address at Danzigerkade 15C, 1013 AP Amsterdam, the Netherlands, and with Trade Register number 63996901;

**Otrium Group:** has the meaning set out in Clause 21;

**Otrium Partner Platform:** Otrium's online platform for partners as made accessible for the Partner by Otrium;

**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 Marketplaces as well as the fulfilment and shipping of all orders made through the Marketplaces;

**Partner Liabilities:** has the meaning set out in Clause 18.1;

**Partnership Service Fees:** means the B2C Partnership Service Fees and the B2B Partnership Service Fees together;

**Platform Promotions:** has the meaning set out in Clause 5.1;

**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;

**Product Liabilities:** has the meaning set out in Clause 13.5(e);

**P&P Fees:** means the fees payable per Product for picking the Product from inventory in the Warehouse and packing as preparation for shipment on the basis of the prices listed from time to time on [legal.otrium.com/eu-partnership-terms#vas-rate-table-eu](https://legal.otrium.com/eu-partnership-terms#vas-rate-table-eu) or the Otrium Partner Platform or as otherwise provided to the Partner by Otrium, at the time of provision of these services;

**Receiving Party:** has the meaning set out in Clause 19.1;

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

**Self-Bill:** has the meaning set out in Clause 15.1;

**Services Invoice:** has the meaning set out in Clause 15.1;

**Smart Pricing:** has the meaning set out in Clause 5.1;

**Supply Terms:** the terms set out in Otrium Supply Terms available at [legal.otrium.com/eu-partnership-terms#supply-terms](https://legal.otrium.com/eu-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

- 2.1. Otrium has the right to update, revise or amend the Agreement at any time, in which case it will provide the Partner with reasonable prior notice and the relevant updated part of the Agreement.
- 2.2. Unless the notice states otherwise, the updated terms of the Agreement will become effective and binding on the next business day after the provision to the Partner. The Partner's continued use of the Marketplaces and Otrium's services after such changes enter into force constitutes the Partner's acceptance of the new terms, which shall be binding on the Partner.
- 2.3. If the Partner does not agree with such update, the Partner must notify Otrium within fourteen (14) calendar days of the date of the notification of the amendment to the Partner.
- 2.4. These Otrium Terms of Service for Partnerships were last updated on the date indicated at the bottom.

## 3. COOPERATION BETWEEN THE PARTIES

- 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 each of the operating territories and jurisdictions

where Otrium is active or becomes active. The Partner shall procure the marketability of the Products in such territories and jurisdictions in such manner that the locally required specifications of the Products are complied with, including, product labelling, product information and product safety.

- 3.3. Otrium may sell the Products that the Partner, at its own discretion, makes available for sale on the B2C Marketplace, directly to the 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 B2C 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 out in paragraph 3.1 of Otrium's Code of Conduct available at [legal.otrium.com/eu-partnership-terms#code-of-conduct](https://legal.otrium.com/eu-partnership-terms#code-of-conduct) and Otrium's Fur Free Policy available at [legal.otrium.com/eu-partnership-terms#fur-free-policy](https://legal.otrium.com/eu-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 Marketplaces, Otrium has the right and the Partner hereby grants a non-transferable, non-assignable, non-exclusive, fully paid and royalty-free license to use the IP rights to facilitate the marketing, promotion, and sale of the Products through its digital platforms and mobile apps, to display the Products in the public domain and to use, adapt, modify campaign visuals of the brand(s), including making AI-based animations, provided such campaign visuals (i) have been provided by the Partner or (ii) were developed in accordance with Clause 12.2.
- 4.2. The Partner represents and warrants that it is the owner of all the necessary IP rights, or the recipient of a valid license thereto, as needed to enable use of such IP rights by Otrium for purposes of the Agreement, and that the Partner has and will maintain the full power and authority to grant the IP Rights in the Agreement (a) without further consent of any third party and (b) without conditions or requirements not set forth in the Agreement. In the event that the Partner no longer fulfils the requirements referred to in this Clause 4.2, it shall promptly inform Otrium thereof.
- 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 on the Marketplaces.

## 5. PRICING OF PRODUCTS

- 5.1. Customer pricing of Products will be established through Otrium's smart pricing tool which, amongst others, optimises the prices and corresponding discounts for the Products on sale on the B2C Marketplace ("**Smart Pricing**") and such optimization is combined with other incentives offered to the Customers in order to enhance the sell-through of the Products as well as the sales proceeds for the Partner (together, the "**Platform Promotions**"). Smart Pricing

- and the Platform Promotions may involve changes in discounted prices, special offers, coupons, vouchers, or other incentives to account for costs and sell the Products in the most optimal manner (including, but not limited to, discounted or subsidised fulfilment and logistics services in relation to Customer orders, such as shipping and returns), which may also improve customer experience.
- 5.2. Otrium may, at its sole and absolute discretion, apply and add a surcharge for the account of the Customer to the sales price on the Marketplaces to compensate for any applicable customs charges in relation to an order of Products by such Customer.
- 6. CUSTOMER SERVICE**
- 6.1. Otrium arranges for 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 B2C Marketplace.
- 7. FULFILMENT AND LOGISTICS 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 procure the delivery of the Products pursuant to the Delivery Duty Paid (DDP) rules as set out in the Incoterms 2020<sup>®</sup> (including, but not limited to, that the Inbound Delivery Costs are for the Partner's account), which delivery takes place upon completion of the unloading of the Products at the loading dock of the Warehouse as designated by Otrium. If preferred by the Partner, but at all times at Otrium's sole and absolute discretion, Otrium may arrange the transport of the Products from a third-party location to the Warehouse as designated by Otrium, provided that such transport will always be at the Partner's sole expense (including, but not limited to, the Inbound Delivery Costs) and risk of loss.
- 7.3. If Otrium were to operate multiple Warehouses, Otrium may transfer the stored Products between its Warehouses, wherever located in each of the operating territories and jurisdictions where Otrium is active or becomes active, if Otrium deems this necessary for maintaining adequate stock levels, improving its services and/or advancing sales of the Products, and any such transfer approved by the Partner is at the Partner's sole expense (including, but not limited to, the B2B Outbound Costs) and risk of loss. In addition, Otrium may temporarily store Products returned by Customers in any of its Warehouses.
- 7.4. Otrium provides fulfilment and logistics 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 sole expense (including, but not limited to, the B2B Outbound Costs) and risk of loss.
- 8. OWNERSHIP OF THE PRODUCTS**
- 8.1. The Partner represents and warrants that its Products

- that are in the Warehouse from time to time are and will remain its property and unencumbered.
- 8.2. The Partner retains legal ownership of the Products until such Products are sold to Customers through the Marketplaces, 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. RECEIVING PROCESS AND ASSESSMENT**
- 9.1. The Partner shall supply Products and information to Otrium in accordance with the terms of the Agreement, including the Supply Terms at the time of the delivery. 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 and absolute discretion, to return such Product at the Partner's sole expense (including, but not limited to, the B2B Outbound Costs) and risk of loss, and in that case the Partner shall provide a return address to Otrium.
- 9.2. Upon supplying the Products and only if applicable, the Partner shall deliver to Otrium all information and documentation in respect of the Products as required for import and export from and to the European Union in a complete and correct manner. 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 to the Warehouse for the B2C Marketplace, Otrium undertakes to count and scan such Products, provided that Otrium does not assess the quality of the Products delivered.
- 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 and absolute discretion, unless the Partner has notified Otrium to return such stock to the Partner at the Partner's sole expense (including, but not limited to, the B2B Outbound Costs) and risk of loss and provided a return address to Otrium:
- (a) to sell and transfer the Scanned Unannounced Stock to any B2B Buyer in accordance with Clause 13 pursuant to the terms for the B2B Direct Transaction, it being understood that this Clause 9.6 constitutes the Partner's consent within the meaning of Clause 13.1; 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 sole expense (including, but not limited to, the B2B Outbound Costs) and risk of loss, and provided a return address to Otrium, Otrium has the right, at its sole and absolute discretion:
- (a) to sell and transfer the Unscannable Stock to any B2B Buyer in accordance with Clause 13 pursuant to the terms for the B2B Direct Transaction, it being understood that this Clause 9.7 constitutes the Partner's consent within the meaning of Clause 13.1; 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 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, the Partner shall accept a shrinkage deviation of up to 1% from the aggregate number of Products delivered by the Partner to Otrium (calculated by dividing (i) the number of lost Products by (ii) the aggregate number of Products on any and all of the Final Stock Lists) and, in addition, the shrink allowance will increase gradually with an additional 1% per 1 January of each new calendar year for Products that are stored in the Warehouse per such date. Otrium shall be responsible for any shrinkage above 1% or, if an increased shrink allowance applies, for any shrinkage above such increased percentage amount, it being understood that the value of any such excess lost stock shall be equal to the lowest discounted sales price on the Marketplaces minus the relevant Partnership Service Fees.
- 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 of and damage to the Products during transport arranged by Otrium and storage in the Warehouse. Products are insured at the average discounted sales price on the Marketplaces (excluding VAT) minus the
- B2C Partnership Service Fees.
- 11. B2C PARTNERSHIP SERVICE FEES**
- 11.1. Otrium shall be entitled to the B2C Partnership Service Fees from the Partner.
- 11.2. The B2C Partnership Service Fees consist of the B2C Commission and the B2C Fixed Fees.
- 11.3. The B2C Fixed Fees are as listed below:
- (a) a storage fee of EUR 0.0073 excluding VAT per Product per day stored in the Warehouse;
  - (b) a handling fee of EUR 1.03 excluding VAT per Product ordered or returned by a Customer;
  - (c) an outbound fee of EUR 5.15 excluding VAT per order by a Customer;
  - (d) a return fee of EUR 5.15 excluding VAT per return by a Customer,
- whereby the outbound fee and the return fee, respectively, shall be borne by each brand involved in proportion to the number of the brand's items forming part of such aggregate order or return, as the case may be, on an item basis and not taking into account the value per item.
- 11.4. All figures listed in Clause 11.3 are reviewed by Otrium on a quarterly basis and updated based on inflation. In addition, Otrium may at any time amend or add B2C Fixed 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.
- 11.5. Otrium shall be entitled to recharge environmental taxes in relation to the sale of textiles and the use of packaging based on the rate(s) listed from time to time on [legal.otrium.com/eu-partnership-terms#vas-rate-table-eu](https://legal.otrium.com/eu-partnership-terms#vas-rate-table-eu), and these charges will be invoiced separately and set off against the Self-Bill referred to in Clause 15.
- 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 and absolute discretion, deems reasonably necessary to enable the sale of the Products through the Marketplaces and (ii) to charge additional fees to the Partner for the performance of such services on the basis of the prices listed from time to time on [legal.otrium.com/eu-partnership-terms#vas-rate-table-eu](https://legal.otrium.com/eu-partnership-terms#vas-rate-table-eu) 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 15.
- 12.2. If, pursuant to the Supply Terms, visuals are incomplete prior to the delivery of the related Products to the Warehouse, Otrium will notify the Partner and request the Partner to send any missing visuals. Without prejudice to Clause 9.1, if Otrium has not received such visuals on the first calendar day prior to the transport of the related Products to 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 aggregate retail value per drop of Products;
- (b) for any photography costs in excess 1% of the aggregate 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; and
- (c) Otrium may determine at its sole and absolute discretion which type of photography is most suitable for the Products in question based on retail value and category, on the basis of the options and prices listed from time to time on [legal.otrium.com/eu-partnership-terms#vas-rate-table-eu](https://legal.otrium.com/eu-partnership-terms#vas-rate-table-eu) or the Otrium Partner Platform or as otherwise provided to the Partner by Otrium at the time of provision of these services, and these charges will be invoiced separately and set-off against the Self-Bill referred to in Clause 15.

### 13. B2B MARKETPLACE

#### *General*

- 13.1. Subject to the Partner's consent (email by any representative of the Partner being sufficient), Otrium has the right to sell and transfer through the B2B Marketplace to any B2B Buyer:
  - (a) the Products as counted by Otrium and initially stored in the Warehouse for the purposes of selling such products via the B2C Marketplace (any such sale and transfer, the "**B2B Clearance Transaction**");
  - (b) the Products in the Partner's warehouse or delivered to the Warehouse for temporary storage by Otrium and subsequent collection by a Buyer (it being understood that Otrium will not sell such Products via the B2C Marketplace and not be responsible for counting such Products) (any such sale and transfer, the "**B2B Direct Transaction**", and together with the B2B Clearance Transaction, the "**B2B Transaction**").
- 13.2. If the Partner instructs Otrium to accept payment in installments of the purchase price payable by the Buyer to Otrium in connection with the B2B Transaction (email by any representative of the Partner being sufficient), such that part of such purchase price amount is payable by the Buyer after the delivery of the Products to the Buyer, Otrium will not be liable for any failure by such Buyer to fulfil any of its payment obligations. The Partner explicitly agrees that any associated risks will solely be for the Partner's account and waives Otrium's payment obligation to the Partner for an amount equal to any portion of the purchase price that the Buyer fails to pay.
- 13.3. The Partner shall not charge any costs to Otrium or to the Buyer in relation to the B2B Transaction, including, but not limited to, costs and expenses in relation to (i) picking Products from inventory, (ii) packing as preparation for shipment, (iii) loading, the transport and the unloading of the Products and (iv) the customs clearance of the Products, including the customs duties payable in relation to the export and the import of the Products.

#### *B2B Clearance Transaction*

- 13.4. The following terms apply to the B2B Clearance Transaction only:
  - (a) Otrium shall be entitled to service fees from the Partner in accordance with the following structure:
    - (i) a commission for Otrium per Product sold calculated as 15% (fifteen percent) of the sales price on the B2B Marketplace excluding VAT (the "**B2B Commission**"); and
    - (ii) the P&P Fees, (together, the "**B2B Partnership Service Fees**" for the B2B Clearance Transaction).
  - (b) For the Products stored in the Warehouse for longer than six (6) months, the Partner shall support and use its best efforts to procure the B2B Clearance Transaction, 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.

#### *B2B Direct Transaction*

- 13.5. The following terms apply to the B2B Direct Transaction only:
  - (a) Otrium shall be entitled to service fees from the Partner in the amount of the B2B Partnership Service Fees, unless the P&P Fees do not apply, in which case such service fees are limited to the B2B Commission;
  - (b) the delivery of the Products to the Buyer takes place pursuant to the Ex Works (EXW) rules as set out in the Incoterms 2020<sup>®</sup>, at a location as mutually agreed between the Parties from time to time (email between representatives of the Parties being sufficient), being (i) the Partner's warehouse; or (ii) the Warehouse after the delivery of the Products to Otrium in accordance with Clause 13.5(c) for collection by the Buyer;
  - (c) if Clause 13.5(b)(ii) applies, the Partner shall procure the delivery of the Products to Otrium pursuant to the Delivery Duty Paid (DDP) rules as set out in the Incoterms 2020<sup>®</sup> (including, but not limited to, that the Inbound Delivery Costs are for the Partner's account), which delivery takes places upon completion of the unloading of the Products at the loading dock of the Warehouse as designated by Otrium; or alternatively, if preferred by the Partner, but at all times at Otrium's sole and absolute discretion, Otrium may arrange the transport of the Products from a third-party location to the Warehouse as designated by Otrium, provided that such transport will always be at the Partner's sole expense (including, but not limited to, the Inbound Delivery Costs) and risk of loss;
  - (d) the amount to be paid to the Partner is equal to the purchase price paid by the Buyer subtracted by the services fees due by the Partner pursuant to Clause 13.5(a) and, only if applicable, Product Liabilities asserted by the Buyer (as defined below), and the payment term for Otrium will not be shorter than 30 days after the delivery of the Products to the Buyer;
  - (e) notwithstanding the foregoing, the Partner acknowledges that Otrium is not responsible for counting or vetting the Products sold as part of the B2B Direct Transaction, and Otrium will not be liable towards the Partner or the Buyer for

- any injury, loss or other liability arising out of or related to such Products, including any indirect, special, consequential, incidental or punitive damages (whether for loss of profits, loss of business, loss of goodwill, missed savings or otherwise) (the “**Product Liabilities**”); and
- (f) the Partner shall defend, indemnify, and hold harmless Otrium and its Indemnified Associates, from and against all suits, actions or proceedings arising out of, relating to, or alleging any Product Liabilities.
- 14. AGED STOCK**
- With respect to:
- (a) any Products that have been stored in the Warehouse for longer than twelve (12) months and have not been sold through the Marketplaces; or
- (b) any damaged Products that Otrium does not deem suitable for a repair, whether upon delivery from the Partner to the Warehouse or upon a return by a Customer,
- 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 (including, but not limited to, the B2B Outbound Costs), provided that Otrium shall inform the Partner of its intention to that extent at least one (1) week prior to donating such Products and has 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 shall request Otrium to return such Products to the Partner at the Partner’s sole expense (including, but not limited to, the B2B Outbound Costs) and risk of loss, and provide a return address to Otrium.
- 15. INVOICING**
- 15.1. If applicable, Otrium will issue:
- (a) a self-bill invoice or credit note issued by the recipient on behalf of the Partner, which is either an invoice for the amounts to be paid by Otrium to the Partner pursuant to sales of the Products on the B2C Marketplace and or a credit note for amounts to be paid by the Partner to Otrium such as for returns of Products by Customers or otherwise (each a “**B2C Self-Bill**”);
- (b) a self-bill invoice or credit note issued by the recipient on behalf of the Partner, which is either an invoice issued for the amounts to be paid by Otrium to the Partner pursuant to sales of the Products on the B2B Marketplace or a credit note for amounts to be paid by the Partner to Otrium such as for returns of Products by B2B Buyers, Product Liabilities or otherwise (each a “**B2B Self-Bill**”, and together with the B2C Self-Bill, the “**Self-Bill**”); and
- (c) a separate invoice for services provided by Otrium to the Partner pursuant to the Agreement (each a “**Services Invoice**”).
- 15.2. The Partner hereby agrees to self-billing on its behalf in accordance with Clause 15.1 for any sales of the Products on the Marketplaces each month, pursuant to which Otrium prepares and issues the Partner’s invoices or credit notes, as the case may be, and forwards a copy to the Partner.
- 15.3. If invoices or credit notes apply for a certain month,
- Otrium will make the relevant Self-Bill or Service Invoice available to the Partner ultimately on the seventh (7<sup>th</sup>) calendar day after such month on the Otrium Partner Platform or otherwise.
- 15.4. A payment term of fourteen (14) calendar days applies to any Self-Bill and Service Invoice, provided that Otrium has the right, at its sole and absolute discretion, to set-off any amount payable by the Partner to Otrium (including, but not limited to, pursuant to any Self-Bill or Services Invoice) against any amount payable by Otrium to the Partner (including, but not limited to, pursuant to any Self-Bill).
- 15.5. The Self-Bill and the Service Invoice will be specified.
- 15.6. If the Partner is of the view that the Self-Bill does either not meet any of the formal requirements or that the tax treatment applied is incorrect, the Partner will inform Otrium within one (1) month after the date of the relevant Self-Bill. In case the Self-Bill requires adjustment, Otrium will issue a credit note and a revised Self-Bill on the Partner’s behalf as soon as reasonably possible.
- 15.7. All payments under the Agreement shall be made in euro.
- 16. PARTNER INFORMATION**
- 16.1. The Partner shall provide Otrium with the VAT registration number issued by the authorities of the country pursuant to the laws of which the Partner is incorporated and existing.
- 16.2. In addition, subject to the application in accordance with applicable laws of the EU call-off stock simplification as referred to in Clause 16.2, the Partner shall provide Otrium with a Dutch VAT number if Products are stored in any Warehouse in the Netherlands and, only if applicable, a local VAT number if Products are stored in any Warehouse in another country.
- 16.3. The Partner shall provide a written confirmation to Otrium if it applies the EU call-off stock simplification with regard to Products held in any Warehouse in the Netherlands and in such event the Partner shall comply with the requirements of the call-off-stock simplification.
- 16.4. The Partner shall inform Otrium if the Partner ceases to be VAT-registered, transfers business as a going concern or becomes registered under another VAT number.
- 16.5. Otrium shall in any event not be responsible for compliance with any requirements of the Partner set out in this Clause 16 or call-off-stock requirements, and Otrium shall not be liable for any taxes, damages or any other costs that the Partner may incur in relation to a failure to comply with the requirements set out in this Clause 16 or applying the call-off stock simplification regime.
- 17. TERM AND TERMINATION**
- 17.1. The Agreement is entered into for an indefinite term.
- 17.2. If either Party notifies the other Party in writing that it wants to terminate the Agreement in accordance with this Clause 17.2, the Agreement will terminate at midnight at the end of the first (1st) month after the day the other Party receives that notice.
- 17.3. Otrium may terminate the Agreement with immediate effect in case of a breach of Clause 3.5.
- 17.4. Upon termination of the Agreement:
- (a) Otrium will, at the Partner’s sole expense

- (including, but not limited to, the B2B Outbound Costs) and risk of loss, return any unsold Products to the Partner and the Partner shall provide a return address to Otrium.
- (b) Otrium will be entitled to fulfil any outstanding final Customer orders of Products;
  - (c) 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 15 (*Invoicing*), provided that, notwithstanding Clause 15 (*Invoicing*), Otrium may in the case of such termination or if Otrium deems such termination a possibility, refrain from paying the amounts due and payable to the Partner if such amounts are reasonably expected to be lower than the amounts that may be due and payable to Otrium, including, but not limited to, in relation to expected (i) returns of Products by Customers, (ii) B2B Outbound Costs, (iii) the Partnership Service Fees and (iv) other services by Otrium to the Partner;
  - (d) all rights to any IP rights as contained in Clause 4 (*Marketing and promotion*) will terminate immediately, save for use reasonably necessary for the fulfilment of any remaining obligations, including the display of the visuals on Otrium's website and mobile app until the completion of Otrium's offboarding process; and
  - (e) the Receiving Party will at the written request of the Disclosing Party at its own discretion return (to the extent technically practicable) to the Disclosing Party all physical Confidential Information received and copies thereof, or permanently erase (to the extent legally and technically practicable) any of the foregoing that is stored in electronic form.
- 17.5. Notwithstanding Clause 7.6 and Clause 17.4, if an amount that is due and payable by the Partner to Otrium is outstanding, Otrium has the right to retain all unsold Products in the Warehouse until all such payable amounts have been received by Otrium and, for the avoidance of doubt, Clause 11.3(a) shall continue to apply under any circumstance.
- 17.6. The accrued rights and obligations of each Party at termination, Clause 7.2, Clause 8.2, Clause 9.5, Clause 9.10, Clause 11, Clause 12.1, Clause 13, and Clauses 15 through 23 shall survive any termination of the Agreement.
- 18. LIABILITY AND INDEMNIFICATION**
- 18.1. Otrium will not be liable towards the Partner for any injury, loss, damage or other liability that is attributable to the Partner or arising out of or related to the Products, including, but not limited to, as a consequence of (i) hidden defects, (ii) manufacturing errors, (iii) defects following a return by a Customer who purchased the Product from Otrium; and (iv) infringements of third-party intellectual property rights in relation to the Partner's IP rights, the Products or the materials provided by the Partner hereunder (the "**Partner Liabilities**"). The Partner shall defend indemnify and hold harmless Otrium and its Indemnified Associates from and against any third-party claim, suit or proceeding arising out of, related to, or alleging any of the Partner Liabilities.
- 18.2. The Partner shall defend, indemnify and hold Otrium harmless from and against any third-party claim, suit, or proceeding arising out of, related to, or alleging an injury, loss, damage or other liability caused by any information or documentation (including in relation to any Product, such as the corresponding manufacturer's recommended retail price) provided on behalf of the Partner to Otrium or its service providers being incorrect, infringing, incomplete or misleading.
- 18.3. If the Partner has not met the Partner's requirements as set out above in Clause 15 (*Invoicing*) or Clause 16 (*Partner information*), the Partner shall be liable for any VAT, fines, damages and other costs due by Otrium as a result thereof.
- 18.4. Otrium will handle any claims made by Customers in relation to the logistics and fulfilment of the Products. Otrium shall defend and indemnify the Partner from and against any third-party claim 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 the Warehouse.
- 18.5. 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.
- 18.6. Except in case of gross negligence or willful misconduct, Otrium will not be liable towards the Partner for any indirect, special, consequential, incidental or punitive damages (whether for loss of profits, loss of business, loss of goodwill, missed savings or otherwise), nor will Otrium's cumulative liability arising out of or related to this Agreement exceed the total amount paid by the Partner to Otrium pursuant to the Agreement during the twelve (12) months before the last event giving rise to the liability. Notwithstanding the previous sentence, Otrium's liability for any loss of and damage to 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.
- 19. CONFIDENTIALITY**
- 19.1. "**Confidential Information**" means any and all information disclosed by one Party ("**Disclosing Party**") to the other ("**Receiving Party**"), whatever its nature (technical, commercial, legal, financial, personal or any other) and whether in written, oral, visual, electronic or any other form of communication, which is non-public information Receiving Party should reasonably consider a trade secret or otherwise confidential. Confidential Information includes, without limitation, information relating to Disclosing Party's ongoing or proposed business, products or services, proposals, financial and technical information, samples, plans, patents, trademarks, drawings, models, designs, specifications, software (in object or source code) and related documentation. The content of the Agreement shall be considered as Confidential Information.

19.2. Receiving Party undertakes for the term of the Agreement and for a period of five (5) years from the date of the termination of the Agreement:

- (a) to protect and keep the Confidential Information as strictly confidential, and to apply to it substantially the same protection that it provides to its own confidential information;
- (b) to disclose the Confidential Information exclusively to its own employees on a need-to-know basis for the performance of 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.

19.3. 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.

19.4. 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.

## 20. WARRANTIES AND DISCLAIMER

20.1. Each Party represents and warrants that it:

- (a) 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) 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) will comply with all applicable laws and regulations with respect to its activities under the Agreement.

20.2. 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 Marketplaces, 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.

## 21. 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 the 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.

## 22. MISCELLANEOUS

22.1. *Waiver.* No waiver of any provision of this Agreement shall be effective unless such waiver is in writing and signed by or on behalf of the Party entitled to make such waiver. The waiver by either Party of any default or breach of the Agreement will not constitute a waiver of any other or subsequent default or breach.

22.2. *Invalidity.* In the event any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, under any applicable law, then that provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

22.3. *Counterparts.* The Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. The Parties may enter into the Agreement by signing any counterpart.

22.4. *Costs.* Unless this Agreement provides otherwise, all costs which a Party has incurred or must incur in preparing, concluding, or performing this Agreement are for its own account.

22.5. *Notices.* Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing in the English language, addressed to that Party at its address set out in the order form or any other address as that Party may have specified to the other Party in writing in accordance with this Clause 22.5, and may be delivered (i) personally (noticed deemed given upon receipt), (ii) delivered by registered post (noticed deemed given upon confirmation of receipt); (iii) sent by an internationally recognized overnight courier service (notice deemed given upon receipt) or (iv) via email (if the email is sent (A) after 17:00 hours CET or (B) on a Dutch national holiday pursuant to section 3 of the Dutch General Time Limits Act (*Algemene Termijnenwet*), the notice is deemed given upon the first the day that is not such Dutch national holiday.

22.6. *References.* Any reference in these Otrium Terms of Service for Partnerships to a Clause is to the relevant clause of these Otrium Terms of Service for

Partnerships. Any document referenced via a weblink in these Otrium Terms of Service for Partnerships forms an integral part of the Agreement.

- 22.7. *Non-applicability and prevailing terms.* No purported modification of the Agreement by the Partner of any terms of conditions of any purchase 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, these Otrium Terms of Service for Partnerships or the Supply Terms, the latter shall prevail over such general terms and conditions of the Partner.

## **23. GOVERNING LAW AND JURISDICTION**

- 23.1. The Agreement (including Clause 23.2) and any contractual or non-contractual obligations arising out of or related to the Agreement shall exclusively be governed by and construed in accordance with the laws of the Netherlands. The CISG (United Nations Convention on Contracts for the International Sale of Goods) does not apply.
- 23.2. The Parties irrevocably agree that all disputes arising out of or related to this Agreement, including disputes concerning its existence, its validity, and any non-contractual obligation, will be resolved exclusively by the Amsterdam District Court, without prejudice to an appeal with its appellate courts in the Netherlands, and that accordingly any proceedings arising out of or related to the Agreement shall be brought in such courts

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