

## ODLO International AG Standard Terms and Conditions of Delivery and Payment (T&C)

### 1. General provisions

- 1.1 These Standard Terms and Conditions of Delivery and Payment ("T&C") shall apply as a master agreement for all - also future - contracts between ODLO International AG ("ODLO") and companies that purchase ODLO products for resale, i.e. are not consumers ("Buyer(s)").
- 1.2 ODLO's T&C apply exclusively. ODLO hereby expressly objects to any standard terms and conditions of the Buyer. Such standard terms and conditions shall not become part of the contract even if ODLO does not object to them upon receipt or the Buyer places orders with reference to its standard terms and conditions.
- 1.3 The applicable ODLO Terms and Conditions are available at any time from [https://www.odlo.com/AGB\\_INT.pdf](https://www.odlo.com/AGB_INT.pdf).

### 2. Conclusion of the contract, scope and content of the purchase contracts

- 2.1 ODLO's offers are non-binding and subject to change. Only the order of the Buyer represents a binding offer to conclude a purchase contract. The purchase contract is concluded by written order confirmation by ODLO (acceptance); acceptance may also be expressed by fax or e-mail or in any other electronic form. Acceptance can also be declared by means of unconditional delivery.
- 2.2 The scope and content of a contract shall be based on the agreements made between the contracting parties, the price list valid at the time the contract is concluded, the order confirmation from ODLO and these T&C.
- 2.3 ODLO reserves the right to change these T&C unilaterally at any time. ODLO shall notify the Buyer of any changes in an appropriate manner. The changes shall be deemed accepted by the Buyer in the absence of its immediate objection thereto.

### 3. Product descriptions and product changes

- 3.1 Illustrations and descriptions of goods in catalogues and brochures (print or online) are only approximate and are not binding for ODLO. ODLO reserves the right to make changes regarding materials and design of the goods ordered by the Buyer.

### 4. Prices, price changes, minimum order values

- 4.1 Prices are quoted in Schweizer Franken (CHF) plus VAT. Unless otherwise agreed, the list prices stated in the order confirmation shall apply. If no express order confirmation is issued (see section 2.1), the seasonal prices valid at the time of delivery shall apply.
- 4.2 The minimum order value per order and delivery is CHF 120.00 (net). For orders below this minimum order value, the Buyer accepts a surcharge of CHF 10.00 (net) per respective order for below-minimum quantities.

### 5. Shipping, transfer of risk, delivery

- 5.1 All deliveries to destinations within Switzerland shall be shipped DDP (Incoterms 2010) to the location of the Buyer specified in the order. The selection of the place of dispatch and the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to ODLO's reasonable discretion and be without liability for the cheapest and fastest transport. Costs related to the subsequent changes of the place of receipt requested by the Buyer shall be borne by the Buyer. Deliveries to destinations outside of Switzerland are made EXW (Incoterms 2010).
- 5.2 Unless expressly agreed in writing, the delivery periods stated by ODLO are not binding. Accordingly, deliveries deviating from this do not entitle the Buyer to rescind the contract nor is the Buyer entitled to assert any other claims in this context. ODLO is in particular not liable for any damage, direct or indirect, suffered by the Buyer as a result.
- 5.3 Orders below CHF 200.00 (net) will be charged with a transport fee of CHF 7.00 (net).
- 5.4 Benefit and risk shall pass to the Buyer upon delivery to the forwarding agent, the carrier or any other person designated to perform the carriage at ODLO's distribution warehouse.
- 5.5 ODLO is entitled to make partial deliveries insofar as this is reasonable for the Buyer.
- 5.6 In case of default in acceptance or any other breach of duties to cooperate by the Buyer, ODLO is entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Buyer at the time of such default or breach of duty to cooperate.

### 6. Payments, default of payment, right of rescission of contract

- 6.1 Payments for textiles, bags, accessories and promotional items must be made within 30 days after the due date and receipt of an invoice net cash. If payment is made within 10 days of receipt of the auditable final invoice, the customer is entitled to deduct a 3% discount from the final payment.
- 6.2 Payments for so-called second choice goods, samples, articles at net prices and special items must be made net cash within 10 days after invoicing.
- 6.3 Due dates are calculated from the date of the respective invoice. The invoice is issued after the goods have been dispatched. Timeliness of the payment is determined exclusively by the date the funds are received by ODLO. If the Buyer does not meet the due date, it shall be in default without further ado and shall in particular be liable to default interest.
- 6.4 ODLO has the right - after setting a grace period - to rescind its purchase contract with the Buyer not yet fulfilled by ODLO if circumstances become known to ODLO after conclusion of the respective purchase contract from which the credit unworthiness of the Buyer arises, or if the Buyer is in default of payment under a purchase contract. In the event of a rescission due to default of payment, the Buyer must return the relevant goods to ODLO without delay.
- 6.5 ODLO is entitled to demand payment in advance if it becomes aware of the risk of the Buyer's inability to perform, even after conclusion of a purchase contract.

### 7. Warranty

- 7.1 Precondition for any warranty claim of the Buyer is the Buyer's full compliance with all requirements regarding inspection and objection established by the applicable law. The Buyer must inspect the received goods immediately upon receipt and handle them with care. Any damage to or loss of goods in transit must be claimed by the Buyer immediately after receipt of the shipment against the carrier. Other identifiable defects must be reported to ODLO in detail within 5 business days of receipt by written notice. Defects which are not visible upon receipt of the goods must be reported in detail by written notice within 5 business days after discovery.
- 7.2 If the Buyer or third parties make changes or perform repair work or otherwise handle the goods inappropriately, all claims for defects are forfeited without further ado. In the case of so-called second choice goods and special items, the Buyer is not entitled to any claims for defects, insofar as the defect was the reason for the downgrading of the goods or it concerns defects which the Buyer should expect in the case of such goods.
- 7.3 In the event of a warranty claim, the affected goods shall be repaired or replaced free of charge within a reasonable period of time at the discretion of ODLO.
- 7.4 In the case of defects that have been duly notified, the Buyer must immediately give ODLO the opportunity to examine the goods in question. At ODLO's request, the Buyer must make the affected goods or parts thereof available at ODLO's expense. If the notice of defect was unjustified, ODLO shall be entitled to compensation from the Buyer for the expenses incurred (including freight, handling fee and inspection costs) unless the lack of defect was not apparent to the Buyer.

7.5 Warranty claims shall become statute-barred within 12 months, commencing with the transfer of risk.

## **8. Liability**

8.1 In case of intent or gross negligence on ODLO's part or by ODLO's agents or assistants in performance, ODLO is liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally, ODLO's liability for damages shall be limited to the typically predictable damage.

8.2 ODLO's liability for culpable damage to life, body or health as well as ODLO's liability under the Product Liability Act shall remain unaffected.

8.3 Any liability not expressly provided for above shall be disclaimed.

## **9. Replica products / setoff / assignment**

9.1 For orders of so-called replica products (fan articles) to which a sponsor notice and/or club name/sign is affixed, the Buyer is not entitled to any claims against ODLO in case of club-specific or other changes for which ODLO is not responsible (for example the change of the sponsor and/or the change of the club name/sign or the club colours).

9.2 The Buyer shall be entitled to offset only insofar as the Buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The Buyer is entitled to claim retention rights only to the extent such rights are based on the same transaction.

9.3 The Buyer's rights under the transactions concluded with ODLO may not be assigned by the Buyer. However, ODLO is entitled to assign all rights it has against the Buyer to third parties and to transfer all data required to the assignee for the purpose of collecting the claim. Furthermore, ODLO shall have the right to appoint a third party at any time to assume all rights and obligations arising from the contract in ODLO's place.

## **10. Intellectual property rights**

10.1 ODLO is the owner of various trademarks consisting of the ODLO component or the ODLO logo [x] (hereinafter collectively referred to as the "ODLO Trademarks"). The contract between ODLO and the Buyer does not grant the Buyer any rights to the ODLO Trademarks.

10.2 The Buyer acknowledges and agrees that it is not permitted to operate its own e-commerce distribution channels using the ODLO Trademarks or confusingly similar signs as the name or in the URL for such e-commerce distribution channel without ODLO's prior written consent. The Buyer undertakes not to use or register the ODLO Trademarks or confusingly similar signs in existing or new media (Facebook, Instagram, Twitter, etc.), in search engines, as part of a trademark, a domain name, a company name, an AdWord or a meta tag. Furthermore, the Buyer undertakes not to use or register the ODLO Trademarks for paid search engine marketing. Existing registrations or any current use are to be immediately cancelled and stopped by the Buyer.

## **11. Miscellaneous**

11.1 Should any provision of these T&C be or become invalid, the respective contract and the remaining terms and conditions shall not be affected thereby. The invalid provision shall be replaced by such valid provision which comes as close as possible to the intended economic purpose.

11.2 Any one-time or repeated failure to assert ODLO's claims under a contract or one of the provisions of these T&C or a one-time or repeated waiver of compliance with or fulfilment of individual contractual obligations of the Buyer shall not constitute a general waiver of the corresponding rights of ODLO and shall, in particular, not affect the right to enforce the relevant claim in the event of a further breach of obligations by the Buyer.

11.3 The registered office of ODLO shall be the place of performance for payments.

11.4 These T&C and all legal relations between ODLO and the Buyer shall be governed exclusively by Swiss law to the exclusion of its conflict of laws provisions. This choice of law shall also apply, to the extent permitted by law, to agreements under property law / rights in rem, including assignments of claims and other security interests. The application of the UN Convention on Contracts for the International Sale of Goods, as amended from time to time, is excluded.

11.5 Resort shall be to the general courts of law. The courts of justice at the registered office of ODLO shall have exclusive jurisdiction over any dispute. However, ODLO may also bring action against the Buyer at any other place of jurisdiction permitted by law. Priority statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.