

Distributor Agreement for OTON Marketplace

Last update: 15.02.2022

This Distributor Agreement for OTON Marketplace (the **“Agreement”**) is a legal binding agreement between us OTON Market OU, a company registered in Estonia with registered office at Harju maakond, Tallinn, Lasnamae linnaosa, Punane tn 6-219, 13619, registered company number 14832129 (the **“Company”**) and (the **“Distributor”** or **“you”**) that wants to promote and distribute goods or services (the **“Products”**) of the retailers (the **“Retailer”**) sold on <https://oton.market>, any of its sub-domains and any other websites operated by us or on our behalf and any mobile device application or desktop application developed by us or on our behalf (the **“Website”** or the **“OTON Marketplace”**), including all services and tools available on it (the **“Services”**).

Please read this Agreement carefully and make sure that you understand it before using the OTON Marketplace and the Services.

By clicking the **“I AGREE”** button or by signing this Agreement and by promoting or distributing any Products from the OTON Marketplace, using any of the Services, you agree to be bound by all terms and conditions of this Agreement (including Affiliate program and the applicable policies), as this Agreement may be updated from time to time in accordance with this Agreement. You further represent and warrant that you have the requisite right, power, and authority to enter into this Agreement.

We may change this Agreement at any time in our sole discretion. The changes will be effective upon posting of such updates on the Website and Distributor Portal (Back office), which is the primary web-based interface provided to you by the Company. You are responsible for reviewing such postings and any applicable changes.

Terms and definitions used in this Agreement shall have the same meaning as defined in OTON Marketplace Terms and Conditions.

1. APPOINTMENT, ACCEPTANCE & SCOPE

- 1.1. Non-Exclusive Appointment.** Subject to the terms and conditions of this Agreement, the Company hereby appoints and grants the Distributor the non-exclusive right to promote and distribute the Products to the customers located in the Territory (the **“End-Customers”**) and to render other services as a distributor for the Company as set forth herein.
- 1.2. Territory.** The rights granted to the Distributor hereunder are granted for the countries where the Products are permitted for sale and delivery. Information about list of such countries can be found on the relevant Product’s page on the Website.
- 1.3. Distributor Portal (Back office).** The Company will provide the Distributor with web-access to the distributor portal (Back office) with a personal account of the Distributor (the **“Distributor Portal”**). The Distributor Portal contains information related to the Distributor’s fee, delta, some instructions and policies to be fulfilled within the Distributor’s activity, other information.

- 1.4. **Products.** Except otherwise defined by the Company via the Distributor Portal, the Distributor is granted with the rights to promote all range of the Products listed in the OTON Marketplace.
- 1.5. **Subagents.** The Distributor is not permitted to appoint any sub-agent, sub-distributor, sub-representative or other persons to act on the Distributor's behalf or to otherwise perform any of the Distributor's obligations under this Agreement within the Territory.
- 1.6. **Relationship of Parties.** The Distributor is an independent contractor and is not and shall not be deemed to be an employee, legal representative, dealer, general agent, joint venturer or partner of the Company for any purpose. The Distributor acknowledges that the Company has not granted it any authority to make changes to the Company's or Retailer's terms and conditions of sale, grant any warranties in excess of those extended by Company or Retailer, or limit its liabilities or remedies less than Company limits its liabilities and remedies, sign quotations, incur obligations (expressed or implied), or in general enter into contracts on behalf of the Company or bind the Company in any transaction with customers, governmental agencies or third parties.
- 1.7. **Affiliate program.** Detailed marketing plan and conditions of the Company's affiliated program shall be described in separate document ("**Affiliate program**"), posted on the Website and/or Distributor's portal.

2. ORDERS, PRICE, TERMS OF SALE & PAYMENT

- 2.1. **Communications Pursuant to this Agreement.** All communication, access to the Products, order confirmation and order management, etc. shall be made via the Website and Distributor Portal.
- 2.2. **Prices, Shipment, Quality and Features.** The Distributor agrees to promote the Products in accordance with the prices indicated on the Website. The Distributor shall be obliged to promote the Products based on the information about shipment, quality and features of the Products provided by the Retailer. The Distributor is not entitled to provide the End-Customer with any information or the Product characteristics that have not been provided and approved by the Retailer.
- 2.3. **Terms of Sale.** All sales by the Product shall be performed in accordance with the terms and conditions defined by the Retailer in the relevant description of the Product.
- 2.4. **Fee.** The amount of fee applied for each sale made by the Distributor shall be calculated separately depending on the different factors and shall be displayed on the Product page and/or in the Distributor Portal (the "**Fee**"). The currency of the Fee payment can be EUR, cryptocurrency or other currency agreed by the Parties. The Fee shall be paid up to the Distributor on the deemed completion criteria. Deemed completion criteria means that order is deemed completed only once (i) the Product has been delivered to the End-Customer with a proof of delivery signed by such End-Customer; and (ii) the returns and/or cancellation period stipulated in our policy has expired (the "**Deemed Completion**").

2.5. Fee Payment Terms. The Company will make payment in favour of the Distributor that meet the Deemed Completion criteria on two set days of each month, namely on the 15th and the 30th of each month, except otherwise date is not agreed by the Parties. When these dates do not fall on business days, payment will be made on the next business day after such a date. For the sake of clarity, Orders that meet the Deemed Completion criteria on or before the 14th of a month will be paid on the last day of that month. Orders that meet the Deemed Completion criteria after the 15th day of a month (but before the last day of that month) will be paid on or before the 15th day of the following month. Parties hereby agree that the Fee payment by the Company to the Distributor can be made in cryptocurrency or fiat currency.

2.6. Low activity. in case of a low activity on your Distribution Portal the Company may apply certain decreasing coefficient to the Fee payments or other instruments according to the Affiliate program.

3. REPRESENTATIONS

3.1. The Distributor and the Company, as applicable, make the following representations, warranties and covenants:

3.1.1. The Distributor is an individual qualified to fulfil its obligations and in good standing in each jurisdiction located within the Territory and is and will remain in compliance with all applicable laws and regulations in the conduct of its activity and, specifically, in its promotion and distribution of the Products and provision of any services hereunder.

3.1.2. The Company is a legal entity, duly organised, validly existing and in good standing in Estonia.

3.1.3. The Company has all rights, power, and authority to enter into this Agreement.

3.1.4. The Parties' execution of this Agreement, and the Parties' performance of its obligations and duties hereunder, do not and will not violate any agreement to which the relevant Party is a party or by which it is otherwise bound.

3.1.5. Neither Party is subject to any pending or threatened litigation or governmental action that could interfere with its performance of this Agreement.

3.1.6. This Agreement is the binding legal obligation of each Party and is enforceable in accordance with its terms.

3.2. Except as otherwise expressly provided herein, the representations and warranties made in this Agreement are continuous in nature and will be deemed to have been given by the Distributor at the execution of this Agreement and each stage of performance of this Agreement.

4. PROPRIETARY INFORMATION

- 4.1. The Company may transfer to the Distributor certain “Proprietary Information” means any information, personal data (name, phone number, mail or other contact details of the End-Customers), commercial and business data (including, but not limited to the information relating to the Products, Services, End-Customers, pricing, internal procedures, business and marketing plans or strategies and business opportunities) either directly or indirectly in any form whatsoever, including, but not limited to, in writing, in machine readable or other tangible form, orally or visually.
- 4.2. Distributor hereby undertakes to use such Propriety Information only in compliance with this Agreement and with the aim to promote and distribute the Products as stipulated herein.
- 4.3. Unless otherwise expressly authorized by the Company, Distributors agrees that it shall treat such Proprietary Information in strict confidence with the same degree of care applied to its own Proprietary Information of like importance, which it does not wish to disclose, publish, or disseminate to third parties.
- 4.4. In no event, will Distributor divulge, in whole or in part, such information to any third party without the prior written consent of the Company. The Distributor may disclose the Proprietary Information to the extent required by a valid order by a court or other governmental body or by applicable law; provided, however, that the it will use all reasonable efforts to notify the Company of the obligation to make such disclosure in advance of the disclosure so that the Company will have a reasonable opportunity to object to such disclosure.
- 4.5. It is understood that all Proprietary Information disclosed under this Agreement, is, and shall remain, the property of the Company. Upon completion of this Agreement, or upon written notice from the Distributor, the Distributor agrees to return all Proprietary Information in its possession.
- 4.6. The obligations of the Distributor under this Section shall survive termination or nonrenewal of this Agreement for a period of five years. For the avoidance of doubt, the Proprietary Information under this Agreement is owned by the Company.

5. DURATION, TERMINATION & LIABILITY

- 5.1. **Effective Date and Duration.** This Agreement shall become effective on the date when you accept this Agreement, and this Agreement shall be valid until you deactivate your account (Distributor Portal).
- 5.2. **Termination.** You may terminate this Agreement at your sole discretion.
- 5.3. **Obligations After Termination.** In the event that this Agreement is terminated, the Company shall have no further responsibilities to the Distributor.
- 5.4. **Survival.** Notwithstanding anything to the contrary set forth herein, no termination of this Agreement shall relieve any Party from any obligations hereunder which are outstanding

on, or relate to matters or claims occurring or arising prior to, the date of such termination or which survive such termination by their own terms or nature.

5.5. Liability. In case you breach any provision of this Agreement or any other obligation causing from the business relationships between you and the Company we may unilaterally terminate this Agreement.

6. INDEMNIFICATION & LIMITATION OF LIABILITY

6.1. Indemnification. To the fullest extent permissible by applicable Law, the Distributor will indemnify, defend, and hold harmless the Company and its officers, directors, agents, employees, and affiliates, from and against any and all claims, demands, actions, costs, expenses, liabilities, judgments, causes of action, proceedings, suits, losses and damages of any nature, which are threatened or brought against, or are suffered or incurred by the Company to the extent caused directly by acts or omissions of the Distributor relating to this Agreement, including without limitation (i) any negligent or tortious conduct, (ii) any breach of any of the representations, warranties, covenants or conditions of the Distributor contained in this Agreement, (iii) any violation of applicable laws or regulations, (iv) infringement or violation of any patent, copyright, trade secret, or other proprietary interest of any third party.

6.2. Limitation of Liability. In no event, shall either Party be liable to the other for any special, indirect, exemplary or consequential damages arising out of this Agreement or purchase or use of the Products.

7. FORCE MAJEURE

7.1. Neither Party shall be held liable for any failure to perform its obligations due to any cause or circumstance beyond the reasonable control of such Party, including without limitation earthquakes, fire, accidents, floods, storms, other Acts of God, riots, wars, rebellions, strikes, lockouts or other labor disturbances, national or international emergencies, failure to secure materials or equipment from usual sources of supply, failure of carriers to furnish transportation, government rules, regulations, acts, orders, restrictions or requirements or any other cause or circumstance beyond the reasonable control of such Party. No such inability to deliver or delay in delivery shall invalidate the remainder of this Agreement.

8. TRADEMARKS

8.1. The Distributor shall not dispute or contest for any reason whatsoever, directly or indirectly, during the term of this Agreement and thereafter, the validity, ownership or enforceability of any of the trademarks of the Company or the Retailers, nor directly or indirectly attempt to acquire or damage the value of the goodwill associated with any of the trademarks of the Company or the Retailers, nor counsel, procure or assist any third party to do any of the foregoing. The Distributor will not institute any proceedings with respect to the trademarks of the Company or the Retailers either in Distributor's own name or on behalf of the Company or the Retailers without express written permission of the Company or the Retailers.

9. GENERAL PROVISIONS

- 9.1. Amendments.** This Agreement may be amended by the Company from time to time by posting relevant amendments on the Distributors portal, to continue use of the Services the Distributor shall be required to accept such amendments by clicking «I AGREE» button.
- 9.2. Governing Law.** This Agreement and other relationships between the Distributor and the Company shall be governed by the law of Estonia.
- 9.3. Disputes.** All disputes and disagreements that might arise from this Agreement shall be resolved by means of negotiations. You agree that for the purposes of the settlement of disputes between You and the Company, an e-mail correspondence with the authorized persons of the Company shall be the effective and binding method of communication.

If the Parties cannot agree on the subject of the dispute the dispute shall be referred to and finally resolved by the relevant court.

- 9.4. Waiver.** The waiver by either Party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

If the Distributor breaches this Agreement and the Company takes no action, or if we delay in taking action, that does not mean that the Company has waived its rights and the Company will still be entitled to use our rights and remedies. If the Company does waive a breach by the Distributor, the Company will only do so in writing (signed by one of our Directors), and that will not mean that we will automatically waive any later breach by the Distributor.

To the extent allowed by the applicable law, the Distributor agrees that it will bring any claim arising from or connected with this Agreement within one (1) year from the date of which such claim arose. Otherwise such claims will be irrevocably waived.

- 9.5. Assignment.** The Distributor may not assign any rights and/or licenses granted under this Agreement. The Company reserves the right to assign our rights without restrictions to any party we may deem fit.
- 9.6. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions.
- 9.7. Notices.** Unless otherwise specifically provided herein, all notices, consents, requests, demands and other communications required or permitted hereunder: (i) shall be in writing; (ii) shall be sent by messenger, via the Distributor Portal, a reliable express delivery service, by e-mail (with a copy sent by one of the foregoing means) or via technical support; and (iii) shall be deemed to have been given on the date of receipt by the addressee.

- 9.8. Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- 9.9. Taxes and Duties.** Each Party is responsible for determining any and all taxes and duties assessed, incurred, or required to be collected, paid, or withheld for any reason in connection with this Agreement and/or promotion/distribution of the Products. Distributor hereby understands that to promote the Products as specified herein, Distributor may be required to register as a private entrepreneur in accordance with the laws of its country of permanent residence/citizenship.