

# **Outpost24 Inc – One-time Reseller Terms and Conditions**

## Outpost24's General One-Time Reseller Terms and Conditions ("O24 T&Cs")

### Definitions

**"Agreement":** The Quotation presented to the RS together with O24 T&Cs.

**"Effective Date":** The day on which the license to the Products will commence which is specified in the Quotation.

**"End Customer":** The party set forth in the Quotation that purchases O24 Product(s) through RS for their own productive use and not for re-distribution or resale.

**"Intellectual Property Rights":** All patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not), and all applications for the same which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements.

**"Master Agreement":** Governs the use of the Products by End Customer and can be found at [www.Outpost24.com/legal](http://www.Outpost24.com/legal)

**"O24":** Outpost24 Inc, 123 South Broad St, Suite 2530, Philadelphia, PA 19109, USA.

**"Parties":** O24 and RS collectively.

**"Party":** O24 or RS.

**"Product(s)":** The product(s) and service(s) specified in the Quotation.

**"Quotation":** The quotation presented to RS by O24.

**"RS":** The reseller specified in the Quotation.

### 1 One-Time Appointment

- 1.1 Subject to RS's compliance with the Agreement, O24 grants RS a one-time, non-exclusive, non-transferable, and non-sublicensable right to resell the Product(s), solely for use by the End Customer specified in the Quotation.
- 1.2 The Parties agree that the Agreement is non-exclusive and neither Party will be prevented from entering into similar arrangements with other parties. Nothing set forth herein will interfere with O24's relationship with an existing O24 End Customer or prohibit O24 from a direct relationship with an End Customer now or in the future.
- 1.3 The RS has no right to wholly or partially copy the Products or to, other than as explicitly set forth herein, grant a third party any right to use the Products.

### 2 Orders

- 2.1 It is the obligation of the RS to process any orders to the End Customer on the terms and conditions of Outpost24's Master Agreement and to ensure the End Customer has agreed to the terms and conditions of said Master Agreement.
- 2.2 If an End Customer requests changes to the O24's Master Agreement or request additional and/or alternative terms and conditions to apply, such request must be forwarded to the Legal Department of O24 ([legal@outpost24.com](mailto:legal@outpost24.com)), which will answer such request, conduct any legal negotiations and in its sole discretion determine if such request can be accepted or not.
- 2.3 O24 shall use reasonable effort to meet proposed delivery dates for the Products but shall not be liable for delivery delays.

### 3 Prices and payment

- 3.1 The RS shall be provided with a Recommended Retail Price (RRP) by a Quotation but will still be free to set its own retail prices to the End Customer.
- 3.2 Payment terms are net thirty (30) days upon receipt of invoice from O24. VAT, sales tax, and any other applicable tax is the responsibility of the RS.

### 4 Trademark and Intellectual Property

- 4.1 Subject to the Agreement, the RS is granted a one-time, limited, non-exclusive, non-transferable (without right to sublicense), revocable license to use O24's Product trademarks solely for the purpose of accomplishing and closing the resale one-time transaction as specified in the Quotation under this Agreement (together with the trademark "Outpost24" collectively referred to as the "Trademarks"). The RS may, however, not use any of the Trademarks in its company name.
- 4.2 If any infringement of the Trademarks or other Intellectual Property Rights of O24 comes to the attention of the RS the RS shall promptly notify O24 in writing. O24 shall solely decide upon the actions to be taken in connection with such possible infringements.
- 4.3 Each Party (and/or its licensors) will retain ownership in its Intellectual Property Rights. Nothing in the Agreement shall be deemed to transfer or assign ownership in Intellectual Property Rights from one Party to the other Party.
- 4.4 As between O24 and RS:
  - (a) all Intellectual Property rights and all other proprietary rights in the O24 Products shall be owned by O24 (and/or O24 licensors);
  - (b) all Intellectual Property Rights and all other proprietary rights in RS products and services shall be owned by RS (and/or End Customer); and
  - (c) each of O24 and RS undertakes not to challenge or claim any right to the Products, the Trademarks, or any other Intellectual Property Rights of the other Party.

### 5 Warranties

- 5.1 Each Party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Agreement and that those signing this Agreement are duly authorised to bind the Party for whom they sign.
- 5.2 O24 acknowledges that RS has entered into this Agreement in reliance upon O24's expertise in selecting and supplying goods and services fit for purpose.  
O24 warrants and represents that:
  - (a) the O24 Products and documentation are proprietary to and/or duly licensed by O24 and that it has the right to license the Product(s) and documentation to End Customer;

- (b) O24 Products, new releases, new versions and documentation supplied by O24 under this Agreement do not infringe the Intellectual Property Rights of any third party;
- (c) O24 Products will substantially conform to the standard technical specifications applicable to those Products and as supplied upon execution of this Agreement;
- (d) it will perform the support services in a timely, reliable and professional manner, in conformity with good industry practice by a sufficient number of competent support staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements; and
- (e) it is in compliance with, and will supply the Products in compliance with, all applicable law and regulations.

- 5.3 Except as provided for in 5.2 above, O24 expressly disclaims all warranties, expressed or implied, with regard to the Products.
- 5.4 O24 shall indemnify RS against all liabilities, costs, expenses, damages and losses (including any reasonable legal costs and expenses) suffered or incurred by RS arising out of or in connection with claims made against RS by an End Customer arising from End Customer's infringement of a third Party's Intellectual Property Rights in connection with such End Customers' use of O24 Products.
- 5.5 RS shall defend, indemnify and hold O24, its officers, directors, agents and employees harmless against any and all claims, suits, proceedings, damages, judgments and expenses (including reasonable attorneys' fees) or settlement thereof in connection with or arising from any third party claim based upon: (a) the RS's use or marketing, sale or licensing of the Products not in strict accordance with this Agreement; or (b) any warranties or representations made by the RS or the RS's agents which differ from those provided by O24 in this Agreement or Outpost24's Master Agreement. O24 may, at its option, join in the defence or settlement of any such claim with counsel of its choice, at its own expense.

## **6 Limitation of Liability**

- 6.1 Neither Party excludes or limits liability to the other Party for:
  - (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by negligence; or
  - (c) any matter for which it would be unlawful for the Parties to exclude liability.
- 6.2 Notwithstanding anything to the contrary in this Agreement, neither Party shall under any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any indirect, special, incidental, consequential, punitive or exemplary damages including, without limitation, for loss of revenue, profits or information or for any liability to third parties, regardless of the form of action, whether in contract or in tort, including negligence, even if either or both of the Parties have been advised of the possibility of such damages.
- 6.3 Subject to clause 6.1, O24's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall be limited to an amount equal to the total charges RS has paid to O24 under this Agreement during the last twelve months.

## **7 Support**

- 7.1 Unless otherwise agreed upon in writing between the Parties, O24 shall provide first line support to the End Customer.

## **8 Confidentiality**

- 8.1 Each Party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any commercial, technical or other information relating to the Products or the Parties ("Confidential Information") disclosed by one Party to the other Party, except as permitted by clause 8.2.
- 8.2 Either Party may disclose the other Party's Confidential Information:
  - (a) to its employees, officers, representatives, or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other Party's Confidential Information comply with this clause; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under the Agreement.

## **9 Force Majeure**

- 9.1 The Parties shall not be responsible for delays or failures to perform by reason of circumstances outside its responsible control, including, without limitation, changes in laws and regulations or in the interpretation thereof, acts of authorities, war, labour disputes, blockades and major accidents.

## **10 Term, Termination and Post Termination**

- 10.1 The Agreement is effective from the Effective Date as specified in the Quotation. This Agreement will automatically terminate upon (i) delivery of the Products to the End Customer by O24 and (ii) full payment for the said Product(s) by RS to O24.
- 10.2 Without prejudice to any other remedy either Party may have against the other Party for breach or non-performance of this Agreement, each Party shall have the right to immediately terminate this Agreement by giving the other Party written notice thereof if (i) the other Party is in material breach of this Agreement and fails to remedy such breach within thirty (30) days after receipt of notice in writing from the complaining Party; or (ii) if the other Party would enter into compulsory liquidation or become bankrupt or insolvent or make a composition with its creditors, or if a receiver would be appointed for substantially all of the business of that Party.
- 10.3 The RS shall not be entitled to any compensation upon termination of this Agreement. Further, O24 shall be entitled to sell directly to any End Customers after termination of this Agreement without any compensation to the RS.

## **11 Data Protection**

- 11.1 O24 and RS shall employ appropriate organisational, operational, and technological processes and procedures sufficient to comply with industry standards and applicable privacy laws.

**12 Miscellaneous**

- 12.1 Except that either Party may assign this Agreement and its rights and obligations hereunder to its affiliates and subsidiaries, neither Party shall assign this Agreement and its rights and obligations to any third party without the prior written consent of the other Party (said consent not to be unreasonably withheld or delayed).
- 12.2 Amendments, modifications, and alterations to this Agreement shall be made in writing signed by both Parties.
- 12.3 All correspondence and notifications pursuant to this Agreement shall be communicated to the addresses and contact persons set forth in the Quotation, or to such other address and/or contact person that O24 or the RS, as the case may be, shall specify in writing to the other Party. The RS shall send all legal notices to [legal@outpost24.com](mailto:legal@outpost24.com). All communication between O24 and the RS shall be in English, unless otherwise agreed.
- 12.4 If either Party should at any time waive its rights due to a breach or default by the other Party of any of the provisions of this Agreement, such waiver shall not be construed as a waiver regarding other breaches or defaults of the same or other provisions of this Agreement.
- 12.5 This Agreement sets forth the entire agreement between the Parties hereto and annuls and replaces any other agreement or understanding whether written or oral which may have existed between O24 and the RS with respect to the subject matter hereof.

**13 Anti-Bribery and Anti-Corruption**

- 13.1 Both Parties represents and warrants to the other Party that its employees, directors, subcontractors, resellers, and agents shall comply with all local, EU, UK and US anti-bribery and anti-corruption legislation in connection with providing with this Agreement and any subsequent orders.
- 13.2 Each Party shall indemnify the other Party for any loss, damages or costs incurred by the indemnified Party in case of any breach of clause 13.1.

**14 Applicable Law and Arbitration**

- 14.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the State of Delaware, in the United States of America, excluding its conflict of laws principles providing for the application of the laws of any other jurisdiction.
- 14.2 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, the Parties agree in the first instance to enter into good faith discussions in each Party's sole discretion. Unless settled by such good faith discussions, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, or any non-contractual obligations arising out of or in connection with this Agreement, shall be exclusively settled by the courts of the State of Delaware, in the United States of America. The language to be used in the proceedings shall be English.