

GENERAL TERMS AND CONDITIONS

Stand: Juni 2017



in association with



- 1 These General Terms and Conditions (GTC) cover the relationship between our Clients (property owners and prospective owners / tenants) and Otto Immobilien GmbH (hereinafter referred to as 'Broker') with regard to the brokerage of properties. The GTC are compliant with the current statutory situation, as defined in the Brokerage Act (MaklerG), the Real Estate Brokers Ordinance (IMV), the Civil Code (ABGB), the Consumer Protection Act (KSchG) and the Distance Selling Act (FAGG), as well as the Professional Ethic Standards for real estate brokers. A summary of all essential provisions applying to brokerage activities is available at www.otto.at.

To the extent there are no binding statutory provisions, the GTC herein shall take priority over other stipulations. Any deviating and special covenants in the Broker Agreement which have been conceded to a client shall be to the exclusion of the respective stipulations herein, whereas the remaining provisions in the GTC shall continue to be applicable.

In the Broker Agreement the Client was granted the right to raise objections against specific items in the GTC within three working days. In the event the Client exercises this right, the Broker shall be entitled to withdraw from the Broker Agreement prematurely and with immediate effect.

- 2 Under normal circumstances the Broker acts in the interest of both parties (owner and prospective buyer /tenant), unless excluded in a specific case.
- 3 The property owner shall provide the Broker will all information required for the Broker's work and hand over to the Broker any relevant documents – to the extent they are available – or sign required proxies for the Broker to procure such information and documents.

Any changes in the sales conditions must be aligned and coordinated with the Broker.

- 4 The Broker's property offers are non-binding and without obligation. Prospective buyers / tenants may not claim acceptance of their proposal, even if this proposal is fully identical with the owner's offer. Unless otherwise agreed, the Broker is not authorized to accept proposals and conclude transactions.

In the event that a prospective buyer / tenant exercises his/her right to withdraw from the Broker Agreement, he/she may not use the information given by the Broker. In the event the Broker informs the owner that a prospective tenant or buyer has withdrawn from the Broker Agreement, the owner is not entitled to negotiate directly with such individual(s) (i.e., individuals who were informed by the Broker of the opportunity to rent or purchase the property), unless the owner is willing to pay both parts of the commission (his/ her own commission and that of the buyer/tenant).

- 5 The details about a property are provided by the Broker with the diligence of a prudent business person in real estate; if the Broker informs a prospective Client that the details about a specific property have been received from a third party, the Broker shall not be liable for the correctness of this information, unless the Broker should have recognized the obvious incorrectness of the information received. The owner is obliged to disclose any and all circumstances that are relevant for the brokerage of a property. Such circumstances include all known deficiencies of a property and other factors that may influence the price. When dealing with 'non-institutional clients', the Broker's liability for compensation of financial loss is limited to instances of malice or gross negligence. In the event that the Client is an institutional customer, the Broker's liability is limited to instances of malice and exceptionally gross negligence. In such case, the Broker's liability is limited to the insured amount of EUR 2 million.

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In conducting his/her business, the Broker shall advise both Clients in an objective and neutral manner. As the Broker normally acts in the interest of both parties, we recommend that – if required – Clients consult with specialists to review the respective agreements and/or examine the economic efficiencies and tax implications of the transaction to be concluded.

- 6 If one Client has prior knowledge of a business opportunity regarding the sale or rent of a specific property offered to him / her by the Broker, the Client shall promptly notify the Broker and keep evidence of such notification.
- 7 Pursuant to Sec. 7 Brokerage Act, the Broker's commission becomes due immediately when the respective transaction enters into force (i.e., upon both parties' consensus or when a condition precedent takes effect), unless a later date for payment was explicitly agreed. The Broker's claim to commission arises at this point, regardless of the invoice date.

The Broker's brokerage activities are deemed as having been accomplished with success, even if the Broker's efforts solely involved the identification of the transaction partner.

The Broker's right to commission lapses in the sole event that the Client can prove that for reasons beyond his /her control the transaction fails to materialize or is not enforceable due to unreasonable circumstances facing the Client in such situation.

Any agreement on a commission discount is only granted under the condition that the reduced amount will be credited to the Broker's account within one week. If payment is not received within this period, the full amount shall become due.

The Broker shall be entitled to charge default interest at the currently permissible rate (4% for non-institutional clients; for others 9.2% plus/minus the basic rate according to Sec. 456 Civil Code) plus the collection costs as defined in the RAT (Fees Manual of Lawyers).

The Broker may agree with his/her Clients that the Buyer's commission is payable by the Seller on top of the Seller's own commission, or that the Buyer pays both commissions. It is not possible, however, that the owner commission is charged to the buyer or tenant of a one-family home, a row house, or a condominium.

The Broker shall also be entitled to commission, if the transaction defined in the original agreement does not materialize, but a transaction with similar purpose is executed, or if the transaction is concluded at terms and conditions other than those originally defined. In such cases, the commission permissible under the IMV (Real Estate Broker's Ordinance) provisions shall be deemed as agreed.

In the event of a follow-up transaction within three years, the Broker shall be entitled to charge commission on the difference of the higher transaction. This is the case, if e.g., a property which was originally rented out is later sold to the tenant, or if an additional transaction is concluded between the parties (enlargement of rented space or additional purchase). The Broker shall also be entitled to commission if the follow-up transaction was not brought about by the Broker's activities. In the event a lease agreement with an indefinite lease period is extended, the supplementary commission rates defined in the IMV shall apply.

If the subject of the Broker Agreement is an option agreement, the requesting Client shall have to pay 50% of the applicable maximum commission rate, provided that the option is granted. This amount is set off against the full commission when the option right is exercised.

In the event that the prospective Client decides to conclude an option agreement before concluding a purchase or lease agreement, the Broker shall be entitled to charge 50% of the commission agreed with that Client when the option agreement enters into force. If the permissible commission amount for the execution of the transaction is not (fully) charged, the Broker is entitled to agree on 50% of the permissible buyer or tenant commission on the option.

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In the event that the option is exercised, the option beneficiary shall owe the difference to the agreed commission.

The parties confirm that the Broker shall be entitled to the agreed commission if the transaction does not materialize due to the requesting Client's failure to further pursue the transaction without justifiable reason (revocation against good faith and trust). The obligation to pay shall also apply if another transaction is concluded with a partner identified by the Broker, or if another transaction is concluded due to the Client's unlawful disclosure of information to a third party (this applies both to owners and prospective buyers/tenants).

The obligation to pay commission is also agreed upon in the event that the sole Broker Agreement is cancelled prematurely and without justifiable cause, or if the transaction is concluded during the term of the sole Broker Agreement. In dealings with non-institutional clients this provision only applies if it was laid down in the Broker Agreement in writing.

- 8 The Broker reserves the right to broker the property also in a joint effort with other brokers, however, at no additional cost to the Client.
- 9 Place of fulfillment is Vienna. Any disputes arising from the Broker Agreement shall be carried out before the competent court for the First District, unless the provisions regarding non-institutional clients in Sec. 14 Consumer Protection Act are applicable. The parties agree that Austrian law shall apply, to the exclusion of collision norms of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).