

OTTO'S TERMS AND CONDITIONS

LAST UPDATED: June 15, 2018

These Terms of Use ("Terms") are applicable to all websites and mobile devices; by way of example, tablets and cell phones, or other on-line services or platforms ("Services") controlled and operated by Otto's Barbecue & Hamburgers, a Texas Limited Liability Corporation ("Otto's"). Otto's requires that all users of the Services agree to the terms and conditions below. By accessing and using the Services, You and any entity You represent ("You") signify Your agreement with these Terms. If You do not agree with the Terms, You should not use the Services. These Terms also govern our interactions with You on third party platforms.

Use of the Services

The principle purpose of the Services is to provide You with information about Otto's and to provide information about Otto's products and services. You or any person You authorize on Your behalf, shall use the Website for lawful purposes only. Any User conduct that Otto's determines, in its sole discretion, restricts or inhibits any other user(s) from using or enjoying or benefiting from the Services will not be permitted. You are prohibited from using the Services to advertise or perform any commercial solicitation or promotion. By using the Services, You confirm You are legally permitted to use the Services and are legally permitted to use the Services within the jurisdiction from where You are accessing the Services.

All content on the Services, by way of example, text, images, graphics, and sound files ("Content"), are the intellectual property of Otto's, and thus subject to all intellectual property rights and other rights owned or controlled by Otto's. The use, reproduction, transmission, modification, amendment, creation of derivative works, recreations of data, distribution, republication, uploading, downloading, or posting the Content anywhere, including but not limited, on third party websites, social media, or print, is strictly prohibited. Any such acts are in violation of Otto's intellectual property rights and any other rights under applicable laws, including regional laws. By permitting You to use the Services, Otto's does not transfer any property rights, intellectual or otherwise, or issue any license permitting use of the Services.

You are responsible for the purchase and maintenance, or otherwise for any devices, software, and services needed to use the Services. Otto's does not guarantee the Services will properly function on any particular device or software. You are responsible for any charges You incur for using or accessing the Services, including on any computer, tablet, mobile device, or other device You utilize to use and interface with the Services. You are responsible for all of Your activity, Your conduct, or Your accounts in connection with the Services.

You must be age 18 to use the Services without supervision. The Services are not to be used by children younger than age 13. Persons who are age 13 or older but younger than age 18 (or the age of majority in their jurisdiction of residence) may only use the Services with the permission

and under the supervision of a parent or guardian who has reviewed and agreed to these Terms. Please see our Privacy Policy here [\[include a hyper link for Your privacy policy here\]](#) for more information relating to children’s privacy as it relates to the Services.

Submissions by Users

Any and all remarks, suggestions, ideas, graphics, or other information (“Submissions”) that are communicated by You through Services are subject to Otto’s unlimited use. You grant Otto’s a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, transferable license to use any and all of Your Submissions in any manner and for any purpose, including promotional and advertising purposes, without compensation to You. Otto’s has no obligation to treat Submissions as confidential. You may only provide Submissions that are original, that You have the right to provide, and that do not infringe on others’ rights.

You may not provide any Submissions if You are under age 13. If You are older than age 13 but younger than the age of majority in Your jurisdiction of residence (e.g., age 18), You may provide submissions only with the permission and under the supervision of a parent or guardian, wherein Your parent or guardian is responsible for any legal liability relating to Your Submissions.

Warranty Disclaimer and Limitation of Liability

You are provided with the Services on an “as is” basis without warranties of any kind, express or implied. Otto’s disclaims all warranties as to merchantability and fitness for a particular purpose. Otto’s does not warrant that the Services will be uninterrupted or error-free; defects will be corrected; or the Services and server that make the Services available are free from viruses or other harmful components. In addition, Otto’s further does not make any warranty or representation as to the accuracy, reliability, content, or completeness of search results or other information or services provided through the Services. These warranty disclaimers may not apply to You to the extent that applicable law does not allow the exclusion of such warranties. Otto’s may make changes or improvements to the Services at any time.

By using the Services, You expressly agree that use of the Services is at Your sole risk, and You assume total responsibility for use of the Services. You understand that Otto’s is not responsible for any loss You may incur as a result of using the Services. You concur that Otto’s shall not and will not be liable for any damages, losses, or injury caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft, destruction, unauthorized access to, or alteration of the Services, whether for breach of contract, tortious behavior, negligence, or any other cause of action.

You agree that Otto’s is not responsible for any losses or damages arising out of the loss or theft of user information transmitted from or stored on a computer or device or from unauthorized or fraudulent transactions associated with the Services. You agree that Otto’s is not liable for the defamatory, offensive, or illegal conduct of other users or their parties and that the risk of injury from the foregoing rests entirely with You. Otto’s, or any person or entity

involved in creating, producing or distributing any of the Services, will not be liable for any losses or damages, including (without limitation) direct, indirect, incidental, special, consequential and/or punitive damages, or lost profits arising out of the use of or inability to use any of the Services or any content contained therein. This section is not intended to limit Otto's liability for damages to the extent caused by Otto's own gross negligence or intentional or unlawful misconduct. This section is not intended to limit or alter Your rights as a consumer that cannot be limited or altered under applicable law.

Indemnity

You agree to indemnify, defend, and hold harmless Otto's, its content providers, and their respective officers, directors, shareholders, employees, agents, successors, licensees, distributors, affiliates, and assigns from any and all third party claims, demands, liabilities, costs and/or expenses, including attorneys' fees, arising out of or in connection with Your use or activities relating to the Services, Content, or Submissions, including: (1) Your use of the Services; (2) Your on-line conduct in connection with the Services; (3) Your violation or breach of these Terms; (4) Your failure to comply with applicable laws or regulations in connection with the Services; (5) Your negligence, willful misconduct, or violations of the intellectual property or other rights of any person or entity in connection with the Services; (6) any of Your dealings or transactions with other persons or third party platforms resulting from use of the Services; and (7) Your breach of any of the agreements, representations, and warranties set forth in these Terms.

Third Party Sites

Otto's, at its own discretion, may provide links and pointers to websites maintained by third parties. Otto's does not operate or control any information, products, or services on these third party websites. Otto's is not making any representation and expressly disclaims that it has the consent of third parties operating such websites to provide a link or pointer to such websites. Otto's does not endorse and is not accountable for the accuracy or reliability or trustworthiness of any site to which any of the Services is linked or any opinion, content, advice, statement or information made or provided in any such third-party site.

Copyright Notice

Otto's values the intellectual property rights of others and expects its users to reflect the same values. If You believe in good faith that Your work has been copied in a way that constitutes copyright infringement, please provide Otto's Copyright Agent a notice with the following information required by the Digital Millennium Copyright Act, 17 U.S.C. § 512:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyright work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact the complaining party;
- A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please send the notice and any other inquiries under the Digital Millennium Copyright Act to:
Otto's Barbecue and Hamburgers

Attn: Copyright Agent
PO BOX 440713, Houston, TX 77244

Otto's will take whatever action, in its sole discretion, it deems appropriate to respond to the notice. Otto's reserves the right to notify the user who submitted the infringing content. People or entities who have allegedly submitted infringing content, may submit a counter-notice to the Copyright Agent with sufficient information for Otto's to consider in taking any action. Such information should include:

- A detailed description of the content Otto's removed and the URL(s) where the content appeared before removal;
- Your full legal name, physical address, telephone number, and email address;
- The following statement: "Under penalty of perjury, I have a good faith believe that the content described in the DMCA Notice was removed or disabled as a result of mistake or misidentification";
- The following statement: "I consent to the jurisdiction of Federal District court for the judicial district of Tarrant County, and I will accept service of process from the person who provided the DMCA Notice or an agent of such person";
- Your electronic or physical signature.

Otto's may, in its sole discretion, reinstate the content based on the DMCA Counter Notice. However, in no event will Otto's reinstate the content if it receives notice from the copyright claimant that a legal action to restrain the allegedly infringing activity has been filed.

DO NOT make false claims. Misuse of this process may result in termination of Your access to the Services and/or other legal consequences, including costs and attorneys' fees. If You are uncertain whether an activity constitutes infringement, You should seek the advice of an attorney.

Privacy

We urge You to carefully read our full [PRIVACY POLICY](#) before using Otto's as it is incorporated into this Agreement by reference, and governs our treatment of any information, including personally identifiable information You submit to us. You acknowledge that Your submission of any information, statements, data, and content to us is voluntary on Your part and that Otto's may process such information, within the terms of the Privacy Policy.

Arbitration and Class Action Waiver

Otto's hopes to amicably resolve any issues You have with the Services before resorting to final legal action. Before filing a claim against Otto's, You agree to try to resolve the dispute informally by contacting Otto's as shown below or by mailing the details of Your issue to the following: Otto's Barbecue and Hamburgers, Attn: Complaints, PO BOX 440713, Houston, TX 77244. If Otto's is unable to informally resolve Your issue, You may proceed with a dispute against Otto's in accordance with the conditions of these Terms.

Except for limited types of disputes, see below, You agree that disputes between You and Otto's (whether such disputes involves a third party) relating to these Services will be resolved by binding, arbitration. ARBITRATION IS MANDATORY AND FINAL. Please be aware that discovery of any kind and appeal rights in arbitration are usually more limited than in a lawsuit, and other rights provided to You in a court may not be available in arbitration.

All arbitration notices should be sent to Otto's address, see above. The parties shall agree to one arbitrator within twenty days of receipt by the respondent of the request for arbitration or in default appointed by the American Arbitration Association ("AAA") in accordance with the AAA's rules for arbitration of consumer-related disputes, which are available at www.adr.org or by calling AAA at 1-800-778-7879. If an AAA arbitrator is not available, regardless of the reason, the parties may elect an arbitrator from JAMS in the alternative. At Otto's sole discretion, all arbitrations will be held in Harris, Tarrant, Denton, Johnson, Parker, or Wise county, Texas, U.S.A. All arbitrations will be conducted in the English language. The AAA rules will govern payment of all arbitration fees.

This dispute resolution provision will be governed by the Federal Arbitration Act and not by any state law concerning arbitration. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies, or awards that conflict with these Terms.

If the arbitration agreement does not apply to You or Your claim, You and Otto's agree that any judicial proceeding (other than small claims actions as described below) will be brought in the federal or state courts of Tarrant County, Texas, U.S.A. Both You and Otto's consent to venue and personal jurisdiction there.

As an alternative, and if You or Otto's claims qualifies for small claims court in Harris County, Texas, U.S.A. You may bring claims on Your own behalf only. You agree that Otto's may seek

preliminary or injunctive relief from a court of competent jurisdiction in Harris County, Texas, U.S.A. to protect its rights or property pending the completion of arbitration.

Modifications

Otto's reserves the right to revise these Terms at any time and will post the most current version with the Services. Otto's is not obligated to notify You of any change. By continuing to use or access the Services after the revisions come into effect, You agree to be bound by the revised Terms. You acknowledge and agree that Otto's shall have no liability associated with or arising from Your failure to regularly review these Terms for updates or changes, including, but not limited to, Your failure to be aware of critical information or substantially modifications to the Terms.

Trademark and Copyright Ownership

The following trademarks and copyrights are used and owned by Otto's, and all rights are hereby reserved:

1. OTTO
2. OTTO'S
3. OTTO'S BARBECUE & HAMBURGERS SINCE 1951



Miscellaneous

You agree that these Terms constitute the entire agreement of the parties or between You and Otto's and supersede all previous written or oral agreements between the parties or You and Otto's with respect to the Services. These Terms will be governed by the laws of the State of Texas, U.S.A., regardless of any conflicts of laws principles. Otto's failure to enforce a provision is not a waiver of its right to do so later. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. If a provision is found unenforceable, the remaining provisions of the Terms will remain in full effect. You may not assign any of Your rights under these Terms, and any such attempt will be void. Otto's may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services. Nothing contained in this agreement shall create any association, partnership, or agency or joint venture between Otto's and You.

Contact

Address: PO BOX 440713, Houston, TX 77244