

**General Terms of Trade for the semiconductor business of  
OSRAM Opto Semiconductors GmbH**

**1. General**

The General Terms of Trade contained herein apply to all deliveries made and services rendered (hereinafter "Deliveries") by OSRAM Opto Semiconductors GmbH, any of its Affiliates or branch offices (hereinafter "OSRAM") that explicitly make reference to these General Terms of Trade. "Affiliate" means any existing or future entity: (i) directly or indirectly controlling a Party; (ii) under the same direct, indirect or joint ownership or control as a Party; or (iii) directly, indirectly or jointly owned or controlled by a Party. As used herein, the term "control" (including any variations thereof) means the power or authority, directly or indirectly, to direct or cause the direction of the management and policies of such Party or entity, whether through ownership of voting securities or other interests, by contract or otherwise. These General Terms of Trade exclusively apply vis-a-vis entrepreneurs.

Any agreements made between OSRAM and Buyer will be fully set out in writing in the contract whereby contract comprises specific contractual agreements and purchase orders including these General Terms of Trade. Employees of OSRAM are not entitled to make any verbal agreements in deviation from these General Terms of Trade.

**2. Acceptance**

All purchase orders placed with OSRAM, shall only become effective upon written acknowledgement by OSRAM. This results in a delivery and/or service contract to which these General Terms of Trade shall apply. Such contract explicitly precludes the application of any terms and conditions of purchase contained in purchase order forms or other correspondence of Buyer. Buyer is responsible for ensuring that any applicable specifications for the Deliveries which are agreed between OSRAM and Buyer are complete and accurate.

**3. Price**

The prices quoted in the acknowledgement of the purchase order are generally understood to be in the currency stated in the quotations and/or offers given to Buyer. In case of quotations, offers and acknowledgements of purchase orders in foreign currency, the prices shall be bound to the respective foreign currency only as long as the exchange rate of same in relation to the Euro has not changed by more than  $\pm 5\%$  between the date of acknowledgement of purchase order and the date of delivery. OSRAM reserves the right, in case of variations by more than  $\pm 5\%$ , to fix a new price according to the change in the exchange rate for the Deliveries outstanding at the moment of such change.

**4. Conditions of Delivery (incl. Passing of Risk)**

OSRAM reserves the right to effect partial shipments as far as reasonable for Buyer and to submit invoices for partial shipments. Unless otherwise specified (e.g. in the acknowledgment of the purchase order) all prices are understood to be FCA (place of delivery determined by OSRAM as appropriate) in accordance with Incoterms® 2020. For all Deliveries specially developed for Buyer, OSRAM reserves the right to ship a quantity which is within  $\pm 10\%$  of the total quantity ordered. Buyer will be charged for the actual quantity delivered.

## **5. Terms of Payment**

Invoices have to be paid net within 30 days, as of date of invoice. The non-compliance with the terms of payment or any circumstances reducing Buyer's credit-worthiness which becomes known to OSRAM only after entering into the contract and jeopardizes the fulfillment of claims of OSRAM, may entitle OSRAM to call due all payments outstanding and to retain delivery until the Buyer makes an advance payment or provides of a surety. If Buyer does not do so within a reasonable period fixed by OSRAM, OSRAM shall be entitled to withdraw from the contract. Payments overdue shall be charged subsequently with past-due interest of 9 percentage points per annum above the applicable basic interest rate, as of the first day of their falling overdue. The option of enforcement of a higher damage remains unaffected. In case of default of payment, Buyer shall bear the risk for currency exchange losses incurred against the claim in Euro on the due date.

Buyer shall only be entitled to offsetting and retention rights to the extent that Buyer's counter-claims have been finally determined by a non-appealable court decision, are undisputed or have been accepted by OSRAM. This restriction shall not apply to counterclaims of Buyer for defects or partial non-performance of the contract resulting from the same contract as the claims of OSRAM.

## **6. Time of Delivery, Change of Purchase Order (incl. Assembly and Erection)**

If OSRAM is responsible for the delay (hereinafter referred to as "Delay") and Buyer has demonstrably suffered a loss therefrom, the liability of OSRAM for damages in addition to performance shall be limited to a total of 5 % of the price of that part of the Deliveries which due to the Delay could not be put to the intended use. Buyer's claims for damages in lieu of performance shall be limited to 30 % of the price of that part of the Deliveries which due to the Delay could not be put to the intended use. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by Buyer based on statute is limited to cases where OSRAM is responsible for the Delay. The above provisions do not imply a change in the burden of proof to the detriment of Buyer.

## **7. Reservation of Property Rights**

Until complete payment of all invoices, the Deliveries listed in any given purchase order shall remain the property of OSRAM.

## **8. Intellectual Property Rights**

By selling Deliveries to Buyer, OSRAM shall in no case convey any intellectual property rights or copyrights (hereinafter "IPR") to Buyer. Buyer agrees to hold OSRAM harmless against any claim, expense or loss resulting from the infringement of IPR arising from compliance with Buyer's designs, specifications, or instructions unless Buyer proves that the infringement of the IPR was not caused by its fault. OSRAM agrees to hold Buyer harmless if any justified claims resulting from the infringement by the Deliveries used in conformity with the delivery and/or service contract of IPR applicable in the country of the place of delivery are being asserted against Buyer and if Buyer has notified OSRAM promptly in writing of such assertion and provides reasonable assistance and information to defend against the assertion. OSRAM reserves the right to choose appropriate means of defense, including settlements out of court. Should it not be possible for Buyer to use the Deliveries under reasonable circumstances, OSRAM's liability shall be limited to, at its discretion, (i) changing or replacing the Deliveries or (ii) acquiring, at its own expense,

the right to use the Deliveries so that it constitutes no infringement of IPR. If this is impossible for OSRAM under reasonable conditions, Buyer may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions. OSRAM's liability to pay damages is governed by Article 13 (Exclusion and Limitation of Liability). Claims of Buyer are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations. By deviation therefrom, the statutory limitation period of two years shall apply for damage claims due to intentional or grossly negligent breaches of duty or culpable injury to life, the body or health. Claims of Buyer shall be excluded if Buyer is responsible for the infringement of an IPR or if Buyer conceded the infringement. Claims of Buyer shall also be excluded if the infringement of the IPR is caused (i) by designs, specifications or instructions made by Buyer, (ii) by a type of use not foreseeable by OSRAM, (iii) by modifications by Buyer, or (iv) by a combination with components and/or services not provided by OSRAM.

## **9. Software**

For software programs, pertaining documents, and all subsequent additions, Buyer shall have a non-exclusive, non-sublicensable and non-transferable right of use with the Deliveries provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment unless otherwise provided in a software license agreement between OSRAM and Buyer. All other rights shall remain with OSRAM or the program author respectively. Buyer ensures that – except where necessary for use of the Deliveries as intended in the contract – these programs, documents, and subsequent additions are not accessible to third parties or in third countries without OSRAM's express consent. Buyer shall not, under any circumstances reverse engineer, reverse compile, decompile, decrypt or disassemble the software, in whole or in part, except to the extent expressly authorized by OSRAM or applicable statutory law (e.g. in case of deliveries to Germany article Art 69e German Copyright Act and in case of deliveries to Austria Art § 40e Austrian Copyright Act).

## **10. Trade Acceptance**

The acceptance test shall be carried out by Buyer without undue delay. Should the take-over be delayed by reason of circumstances outside OSRAM's responsibility, the written communication of readiness for dispatch by OSRAM to Buyer shall be considered the date of delivery. In the absence of any written communication of inability to take delivery by Buyer within the time for taking delivery, the Deliveries shall be deemed accepted by Buyer. The criteria for acceptance or refusal shall be, in case of Deliveries specially developed for Buyer, the specifications or test conditions jointly agreed upon or, in case of standard Deliveries, the data sheets issued by OSRAM which were effective at the moment of placing of purchase order.

## **11. Warranty (incl. Impossibility of Performance)**

OSRAM warrants that the Deliveries will materially comply with the agreed upon specifications and are free from defects in material and workmanship. OSRAM's obligations under this warranty shall be discharged, at its option, by repairing, replacing, or giving credit for defective Deliveries, except otherwise agreed between OSRAM and Buyer. The period of warranty is 12 months (except for software products), as of the acceptance of the Deliveries by Buyer (see Article 10 – Trade Acceptance). By deviation therefrom, the statutory warranty period of two years shall apply for damage claims due to intentional or grossly negligent breaches of duty or culpable injury to life, the body or health.

Buyer has to give OSRAM notice in writing of any defects, stating sufficient reasons, immediately but within 14 days as of delivery of the Deliveries at the latest. Any defects that could not be detected within that period in spite of careful examination must be communicated to OSRAM, in writing and stating sufficient reasons, immediately after becoming known. In default of such immediate communication, any warranty shall be excluded. The warranty shall also be excluded, if the Deliveries, after their acceptance, are defective due to misuse, neglect or accident or are handled not in conformity with the instructions recommended or given by OSRAM. No warranty shall apply to any defects of Deliveries which are due to any modification or alteration by persons other than OSRAM's authorized personnel or which have been received from any source other than OSRAM or its authorized resellers. Returns shall only be accepted after prior consent by OSRAM and shall be accompanied by an OSRAM Return Material Authorization (RMA) number obtained from OSRAM. For return shipment, Buyer shall use OSRAM's original packing in order to avoid any damage of the Deliveries. In case of justified warranty claims, OSRAM shall bear the transportation costs. In case of unjustified complaints, Buyer shall reimburse OSRAM for all expenses arising from such complaints (including but not limited to transportation costs) unless the Buyer proves that even when exercising due care the Buyer could not realize that the complaint was unjustified. Any claims of Buyer beyond the obligations under this warranty are excluded. If the Deliveries contain software, OSRAM warrants that the software will not fail to meet its programming specification and workmanship at the time of delivery when properly installed and used on the hardware defined by OSRAM. OSRAM does not warrant that the software meets requirements specified by Buyer, is error-free or without interruption. No warranty applies for defects that appear due to, including but not limited to incorrect storage of data medium, supplementary installation of other outside software, operating system modifications or hardware modifications or similar events. The warranty for software and for any updates or upgrades of existing software or parts of it is limited to a period of 3 months from the date of Buyer's acceptance of the Deliveries. By deviation therefrom, the statutory warranty period of 2 years shall apply for damage claims due to intentional or grossly negligent breaches of duty or culpable injury to life, the body or health.

## **12. Force Majeure**

OSRAM shall not be liable for delays and damages caused by cancellation or postponement of the delivery of the Deliveries due to force majeure conditions. Force majeure conditions include all circumstances beyond OSRAM's control which OSRAM could not have reasonably anticipated and whose consequences OSRAM could not have reasonably avoided or overcome. Force majeure conditions include but are not restricted to: natural disaster, war, civil war, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics or pandemics, governmental regulations and/or similar acts, freight embargoes, unforeseeable operating, traffic or shipment disturbances, unforeseeable lack of labor forces, energy, raw materials or auxiliary materials. Strikes, legitimate lockouts, boycotts and other labor disputes are considered force majeure conditions even when OSRAM itself is the target of or a participant of said actions. In the event of an epidemic or pandemic, this provision shall also apply if the epidemic or pandemic had already occurred when the contract was concluded, provided that OSRAM was not aware of its effects on the contract and could not foresee them as likely.

Force majeure conditions affecting a subcontractor hired by OSRAM shall also be deemed a force majeure condition for OSRAM. In the event that the force majeure conditions continue for a period of 3 consecutive months (or in the event that the delay is reasonably expected by OSRAM

to extend for a period of 3 consecutive months), OSRAM shall be entitled to cancel all or any part of the contract without any liability or responsibility towards Buyer.

### **13. Exclusion and Limitation of Liability**

Apart from warranties expressly stated herein and subject to the provisions below, in no event shall OSRAM be liable to Buyer in contract, tort (including negligence) or otherwise for loss or damage to property, loss of use, loss of anticipated revenues, interruption of operation, expenses including costs of capital, claims from Buyer's client(s), loss of profits or revenues or for any indirect, incidental or consequential loss or damage whatsoever.

The aforementioned limitations of liability do not apply in case of willful intent, gross negligence, liability for personal injury, product liability claims and in case of culpable breach of material contractual obligations. Material contractual obligations are those obligations which need to be complied with to reach the purpose of the contract and on the fulfillment of which Buyer usually relies and may reasonably rely on.

Insofar as OSRAM is liable according to the previous provision, the maximum overall liability for OSRAM for damages to property and financial losses not entailed by personal injury shall be limited to the quantum of annual turnover between the parties in respect of the Deliveries affected, as long as OSRAM did not act intentionally or grossly negligently. This does not apply if, as an exception, the foreseeable damage typically occurring for the contract concluded is higher. In this case, liability is limited to the higher foreseeable damage. The aforementioned provisions do not imply a change to the burden of proof to Buyer's detriment.

### **14. Indemnification**

If OSRAM incurs any liability towards any third party for any loss or damage howsoever arising in connection with the performance of the contract with Buyer or supply of the Deliveries to Buyer, Buyer shall indemnify, defend and hold OSRAM harmless to the extent that OSRAM's liability is limited as stated in this General Terms of Trade. This obligation shall not apply if Buyer proves that the loss or damage was not caused by his fault.

### **15. Confidentiality**

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by OSRAM is OSRAM's confidential information. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed between OSRAM and Buyer. If a non-disclosure agreement between OSRAM and Buyer was concluded, such non-disclosure agreement shall prevail.

### **16. Data Protection**

OSRAM and Buyer authorize to release to the respective other party and any of its Affiliates any and all personal or professional data that is necessary or desirable for administration and/or fulfilment of any individual purchase order and these General Terms of Trade.

OSRAM and Buyer undertake to fully comply with any applicable personal data protection laws in applicable jurisdictions, especially with the General Data Protection Regulation (GDPR). OSRAM and Buyer shall ensure compliance with all legal data provisions including but not limited to the GDPR, particularly in regard to the lawfulness of data processing under joint controllership. OSRAM and Buyer shall take all necessary technical and organizational measures to ensure that

the rights of data subjects, in particular those pursuant to Articles 12 to 22 GDPR, are guaranteed at all times within the statutory time limits. Buyer indemnifies OSRAM for any loss or damages, including, but not limited to, fees, fines and financial penalties under any applicable personal data protection laws.

### **17. Export Compliance**

If Buyer transfers goods (commodities, software, technology) delivered by OSRAM or works and services performed by OSRAM to a third party, Buyer shall comply with all applicable national and international (re-)export control regulations (e.g. regulations of the European Union, regulations of the United States). If required to enable authorities or OSRAM to conduct export control checks, Buyer, upon request by OSRAM, shall promptly provide OSRAM with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by OSRAM, as well as any export control restrictions existing. OSRAM shall not be obliged to fulfill the respective contract or any order placed hereunder if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

### **18. Other Matters**

All delivery and/or service contracts shall exclusively be governed by the laws of Germany. The application of the UN-Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) and of Private International Law is excluded.

Any disputes arising out of or in connection with any delivery and/or service contract between OSRAM and Buyer including any dispute as to its existence, validity, interpretation, performance, breach or termination shall be finally settled in compliance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) Paris by one or three arbitrators appointed according to said rules. The arbitration proceedings shall be held in Munich, Germany. The language of the Arbitration shall be either German or English pursuant to mutual agreement. In case such agreement cannot be reached, the language of arbitration shall be English.

Buyer can pass on or assign his rights and obligations arising under such delivery and/or service contract only upon OSRAM's written consent.

These General Terms of Trade together with all conditions, specifications, standards and other appendices constitute the entire agreement and exclusive statement of terms between OSRAM and the Buyer with respect to the subject-matter.

Each clause herein is severable and distinct from every other clause. Should any clauses of these General Terms of Trade be or become invalid, the other clauses shall not be affected thereby. No failure or delay by either party to exercise any right or remedy provided under the delivery and/or service contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy unless stipulated otherwise in these General Terms of Trade. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. Any third party who is not a party to the delivery and/or service contract shall have no right to enforce any of its terms.