

OSRAM Opto Semiconductors Inc.
Terms and Conditions of Sale

1. **GENERAL**
- 1.1 Contract Terms. These Terms and Conditions (the "Agreement") constitute an integral part of any offer made by OSRAM OS Inc. ("OSRAM OS") to sell goods to Purchaser and shall govern the sale of the goods. OSRAM OS objects to any additional or different terms or conditions proposed by Purchaser.
- 1.2 Acceptance. No order by Purchaser, regardless of whether a deposit has been accepted, shall be binding upon OSRAM OS until a credit review has been completed and the order has been accepted by OSRAM OS in writing signed by its authorized representative. Acknowledgement of receipt shall not be deemed acceptance of the purchase order.
2. **PRICES**
- 2.1 Quotations. Unless otherwise stated, all prices quoted by OSRAM OS are based on U.S. dollars and are effective for thirty (30) days from the date of quotation.
- 2.2 Transportation. Transportation shall be FOB shipping point, freight collect with Purchaser's designated carrier. Risk and expense shall be borne by Purchaser.
- 2.3 Delay in Acceptance of Delivery. If purchaser postpones the delivery date, OSRAM OS shall have the right to a) adjust the price of the undelivered goods to OSRAM OS' price at the time of shipment and b) charge Purchaser for any expenses caused by the delay of shipment.
- 2.4 Escalation. Unless otherwise agreed to in writing, except as to goods to be delivered within thirty (30) days of OSRAM OS' acceptance of Purchaser's order, OSRAM OS reserves the right to increase its prices to those in effect at the time of shipment.
3. **TAXES**
- Any sales, use or manufacturer's tax which may be imposed upon the sale or use of goods, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and paid by Purchaser. If Purchaser is exempt from any taxes, Purchaser shall furnish to OSRAM OS an appropriate tax exemption certificate, in form acceptable to the taxing authority.
4. **TERMS OF PAYMENT**
- 4.1 Due Date. Unless otherwise agreed, terms are net thirty (30) days from the date of invoice. All charges are payable in U.S. dollars.
- 4.2 Late Payment. A service charge of 1-1/2 percent per month, not to exceed the maximum rate allowed by law, shall be made on any portion of Purchaser's outstanding balance that is not paid within thirty (30) days after invoice date. Proof of delivery shall be obtained by Purchaser from Purchaser's designated carriers.
- 4.3 If legal action is taken by OSRAM OS, Purchaser shall be liable for OSRAM OS' reasonable attorney's fees, plus the other costs of such action.
5. **DELIVERY, RISK OF LOSS, AND SHIPMENT**
- 5.1 Delivery Date. Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Purchaser's order.
- 5.2 Risk of Loss. Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession to common carrier, FOB shipping point, whereupon all risk of loss, damage or destruction to the goods shall pass to Purchaser.
- 5.3 Shipment. In the absence of written agreement to the contrary, the means of shipment will be at the discretion of OSRAM OS. OSRAM OS reserves the right to make partial shipments and to submit invoices for partial shipments.
- 5.4 Overshipment. OSRAM OS may, at its option, increase the aggregate quantity specified on the reverse side hereof by not more than 5% and Purchaser shall accept and pay for such increased quantity unless timely objection thereto is made after receipt.
- 5.5 Due to supply/demand uncertainties, OSRAM OS may not have sufficient supply of one or more products from its intended source(s) of supply to meet the full requirements of all of its customers, contract or otherwise. When that situation exists, if OSRAM OS performance is not otherwise excused, OSRAM OS may reduce deliveries of such product(s) on any basis it believes equitable, allowing for such priorities to such classes of customers as it deems appropriate. Such reductions need not be made up. If such reduction occurs, Purchaser shall have the option to accept such reduction or to terminate this agreement as to any or all product by 15 days notice to OSRAM OS; such notice to OSRAM OS to be given within 30 days of the notice of reduction.
- 5.6 OSRAM OS shall not accept any returns, except as specified under Warranty Section 9.5. Any exception to this shall be at OSRAM OS' sole option and must be accompanied by an OSRAM OS Return Material Authorization number.
6. **SECURITY INTEREST**
- OSRAM OS reserves a security interest in the goods until final payment is received by OSRAM OS.
7. **CHANGES, RESCHEDULING AND CANCELLATIONS**
- Orders accepted by OSRAM OS cannot be changed, rescheduled or cancelled without OSRAM OS' written consent.
8. **FORCE MAJEURE**
- Neither party shall be liable for its failure to perform any of its obligations hereunder (other than payment obligations) during any period in which performance is delayed by fire, flood, war, embargo, riot, labor strike or unrest, the intervention of any government authority, or any cause beyond the control of such party ("Force Majeure"). If, however, OSRAM OS' performance is delayed for reasons set forth above for a cumulative period of thirty (30) calendar days or more, the Purchaser, notwithstanding any other provision of this Agreement to the contrary, may terminate this Agreement and/or any purchase order issued hereunder by notice to OSRAM OS. In the event of such termination, Purchaser shall purchase all finished goods, work in progress, and Purchaser unique materials that have been purchased within lead-time by OSRAM OS to fulfill Purchaser's purchase order(s). In the event the parties do not terminate this Agreement and/or purchase order due to a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure.
9. **WARRANTY**
- 9.1 OSRAM OS warrants that the products shall be manufactured in accordance with good manufacturing practices, shall conform to specifications, and shall be free of defects of workmanship. OSRAM OS GRANTS NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO A WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 9.2 OSRAM OS shall at its sole discretion re-test and/or replace the reported faulty products, FOB warehouse or local OSRAM OS' office, as specified by OSRAM OS. If the replacement products fail within a reasonable period of time, Purchaser is entitled to request price reduction or to cancel the relevant purchase contract and request OSRAM OS to take back the products delivered (under such purchase contract) and to reimburse the purchase price. In the latter case, Purchaser will supply all identifying shipping documents and use for return shipment OSRAM OS' original packing in order to avoid any deterioration of the goods. In addition, Purchaser will enclose supporting data detailing the nature of the defect.
- 9.3 The warranty period shall be twelve (12) months starting on the date the risk of loss or damage has passed onto Purchaser according to Section 5.2
- 9.4 Paragraph 9.2 is Purchaser's sole remedy for breach of warranty. No warranty extended by OSRAM OS shall apply to any goods which have been modified or altered by persons other than OSRAM OS' authorized personnel; to goods that are defective due to misuse, neglect, improper installation, soldering or accident; or to goods sold as "used".
- 9.5 This warranty is made on condition that immediate written notice of any defect be given to OSRAM OS and OSRAM OS' inspection reveals that the Purchaser's claim is valid under the terms of this warranty. No returns will be accepted by OSRAM OS unless accompanied by an OSRAM OS Return Material Authorization number.
- 9.6 OSRAM OS products are not designed or intended for use in online control of aircraft, air traffic, aircraft navigation or aircraft communications; in the design, construction, operation or maintenance of any nuclear facility; or in the design, construction, operation or maintenance of any applications intended to support or sustain life where personal injury or death may occur. OSRAM OS disclaims any express or implied warranty of fitness for such uses
10. **ASSUMPTION OF LIABILITY; LIMITATION OF LIABILITY**
- 10.1 OSRAM OS assumes liability for any personal injury or property damage that has been directly caused by the products without any modification or misuse, and used based on the written instructions of OSRAM OS.
- 10.2 The remedies in this Agreement are Purchaser's sole and exclusive remedies. To the extent OSRAM OS is held legally liable to Purchaser hereunder (including without limitation with respect to Section 11), OSRAM OS' liability is limited to the lesser of (a) amounts paid to OSRAM OS under the relevant purchase contract. and (b) U.S. \$100,000. In no event will OSRAM OS or its subsidiaries, affiliates, subcontractors and suppliers be liable for any of the following: (a) actual loss or direct damage that is not listed above; (b) damages for loss of data, or software restoration; (c) damages relating to Purchaser's procurement of substitute products or services (i.e., "cost of cover"); or (d) indirect, incidental, punitive, special or consequential damages, including downtime costs and lost profits or revenues. .
- 10.3 Apart from warranties and liabilities expressly stipulated in this Agreement, OSRAM OS disclaims all liability regardless of the cause in law.
11. **PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS**
- 11.1 OSRAM OS represents and warrants that, to the best of its knowledge, the use or sale of the products sold hereunder will not infringe or violate any third-party rights including intellectual property rights, patents or copyrights (all referred to as "Protective Rights"). Without limiting the foregoing, OSRAM OS represents and warrants that it has obtained all necessary third-party permissions and licenses to design and manufacture such products.
- 11.2 Infringement by OSRAM OS. If Purchaser receives a claim that any goods or part thereof infringe upon the rights of others under patent, trademark, or otherwise, Purchaser shall notify OSRAM OS immediately in writing. As to all infringement claims relating to products or parts manufactured by OSRAM OS or one of its affiliates:
 - (a) Purchaser shall give OSRAM OS information, assistance, and exclusive authority to evaluate, defend and settle such claims.
 - (b) OSRAM OS shall then at its own expense and option defend or settle such claims, procure for the Purchaser the right to use the product, remove or modify it to avoid infringement or remove the goods and refund the purchase price, less reasonable depreciation.
 - (c) Product or part not manufactured by OSRAM OS, which is part of or has been incorporated in the goods, is furnished subject only to the manufacturer's patent warranties, if any, and without warranties expressed or implied by OSRAM OS. The obligations of OSRAM OS mentioned in Section 11.2 above apply under the precondition that Purchaser informs OSRAM OS without delay in writing of any claims for infringement of Protective Rights, does not accept on his own any such claims and conducts any disputes, including settlements out of court, only in agreement with OSRAM OS.
 - (d) Any liability of OSRAM OS pursuant to Section 11.2 shall be excluded, if the infringement of Protective Rights is not caused by the product in question itself, for example if such infringement results from the application of the product (including any application-specific circuitry implemented in the product), unless OSRAM OS did offer the product especially for such infringing application.
 - (e) Any liability of OSRAM OS shall also be excluded, if the infringement of Protective Rights results from specific instructions given by Purchaser or the fact that the product has been changed by Purchaser or is being used in conjunction with products not delivered by OSRAM OS, which convert an otherwise non-infringing product to an infringing product.
- 11.3 Infringement by Purchaser. If some or all of the goods sold hereunder are made by OSRAM OS pursuant to drawings or specifications furnished by the Purchaser, should a claim be made that such goods infringe the rights of any third party under patent, trademark or otherwise, Purchaser shall indemnify and hold OSRAM OS harmless against any liability or expense, including reasonable attorneys' fees, incurred by OSRAM OS in connection therewith.
12. **GENERAL**
- 12.1 Designs and Trade Secrets. Disclosures by OSRAM OS. Any drawings, data, designs, software programs or other technical information supplied by OSRAM OS to Purchaser in connection with sales of the goods shall remain OSRAM OS property and be held in confidence by Purchaser. Such information shall not be reproduced or disclosed to others without OSRAM OS' prior written consent.
- 12.2 Assignment. Neither Party may assign this Agreement, delegate its obligations or assign its rights thereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Either party may assign this Agreement to a successor without consent in the case of merger, acquisition or corporate reorganization.
- 12.3 Modification. This Agreement may not be changed, modified or amended, except in writing signed by authorized representatives of the parties.
- 12.4 Governing Law. The rights and obligations of the parties under this Agreement shall be governed by the law of the State of California, without regard to its conflict of law provisions.
13. **EXPORT**
- Purchaser agrees to comply with all U.S. Government export controls. Diversion of these commodities contrary to U.S. law may be prohibited. Export may require validated export license.
14. **ARBITRATION**
- 14.1 Both parties shall attempt to resolve disputes between themselves. Only if this is not possible shall all disputes arising out of or in connection with this Agreement or individual purchase contracts signed hereunder, including any question regarding their existence, validity or termination, shall be finally settled under the Rules of the American Arbitration Association ("Rules") by three arbitrators in accordance with the said Rules.
- 14.2 Each party shall nominate one arbitrator for confirmation by the competent authority under the applicable Rules ("Appointing Authority"). Both arbitrators shall agree on the third arbitrator within thirty (30) days. Should the two arbitrators fail within the above time limit to reach agreement on the third arbitrator, he shall be appointed by the Appointing Authority.
- 14.3 The seat of arbitration shall be San Jose, California. The procedural law of this place shall apply where the Rules are silent.
- 14.4 The language to be used in the arbitration proceeding shall be English.
- 14.5 Prevailing party shall be entitled to attorney's fees and costs.