

General Sales Terms & Conditions

1. General

- 1.1 NO GENERAL TERMS OR CONDITIONS OF THE BUYER SHALL APPLY UNDER ANY CIRCUMSTANCES (INCLUDING ANY GENERAL TERMS OR CONDITIONS WHICH THE BUYER PURPORTS TO APPLY UNDER ANY ORDER, ACCEPTANCE OF ORDER, SPECIFICATIONS OR OTHER DOCUMENTS), UNLESS EXPRESSLY AGREED BY THE SELLER IN WRITING.
- 1.2 These Conditions shall apply to all business dealings by the Seller acting as seller or potential seller of Goods. Variation to these Conditions shall have no effect unless expressly agreed in writing by the Seller.
- 1.3 If there is a conflict between these Conditions and the Contract, the provisions of the Contract shall prevail, unless the Contract recognizes the differences and clearly indicates that these Conditions shall prevail.

2. Order & Confirmation

- 2.1 The Buyer shall send orders ("Orders") to the Seller in the electronic or digital format which is accepted by the Seller, and listing the following items: (i) type(s) of Goods; (ii) quantity of Goods; (iii) applicable unit price; (iv) total price in the Order; and (v) time and place of delivery. Each Order may contain only one place of delivery, unless specifically requested for in the Order and confirmed by the Seller either by written confirmation or making delivery of Goods. The Buyer shall be liable for any incorrect information in an Order.
- 2.2 An Order shall be deemed as confirmed by Seller ("Confirmed Orders") if (a) it is confirmed by the Seller in writing ("Order Confirmation"); or, (b) the Seller has delivered the Goods to Buyer according to such Order.
- 2.3 An Order is not binding on Seller unless it is confirmed by the Seller. If the Seller disagrees with certain items in the Order, the Buyer and the Seller shall discuss in good faith and resolve the differences so that the Buyer can submit a final Order fully acceptable to the Seller. Alternatively, Seller may issue an Order Confirmation with different terms for Buyer to reject.
- 2.4 All Orders/Order Confirmations are governed by the Contract and the Conditions, whether they are mentioned in the Orders/Order Confirmations.

3. Delivery

- 3.1 Unless otherwise agreed in writing between Buyer and Seller, Goods shall be delivered according to delivery terms (according to Incoterms 2010) specified in the Confirmed Order.
- 3.2 Risk of loss shall be transferred to Buyer upon delivery.
- 3.3 Goods are delivered in Seller's standard packaging unless otherwise agreed between the Buyer and the Seller in writing.
- 3.4 Buyer shall take delivery according to the Confirmed Order. If the Buyer fails to take delivery, then
 - (a) Goods shall be deemed to be delivered and the risk of loss shall transfer upon Seller's making of the Goods available for Buyer according to the Confirmed Order; and
 - (b) Seller may choose to, but is not obligated to, arrange for storage of the Goods at Buyer's sole expenses.
- 3.5 Buyer shall not refuse to receive Goods due to minor defects.
- 3.6 The Seller is permitted to deliver the Goods in more than one delivery. If the Goods are delivered in more than one delivery, the Seller will be entitled to invoice each delivery separately.

4. Price & Payment

- 4.1 The price term shall be according to the Incoterms as specified in the Confirmed Order. The price shall be denominated in the currency specified in the Contract or the Confirmed Order. Price includes packaging, VAT, consumption tax and any other tax and customs duty that Seller is required to pay under applicable law and Incoterms for delivery. The Price does not include, and the Buyer shall be responsible for, any VAT, consumption tax or any other tax and customs duty that the Buyer is required to pay under the applicable law or Incoterms for delivery.
- 4.2 If fluctuations occur in one or more of the factors constituting the Seller's cost position, such as, but not limited to, cost of raw materials, wages, insurance premiums, freight, exchange rates and taxes, the Seller is entitled to adjust the Prices accordingly. Seller will inform Buyer in writing of the price adjustment. Buyer shall be deemed to have accepted the price adjustment unless the Buyer informs Seller that it wishes to terminate the Contract within 14 days after receipt of the notice of price adjustment.
- 4.3 Unless it is otherwise agreed in writing by both Buyer and Seller, payment of Prices for the Goods shall be made by the Buyer to Seller's bank account as designated by the Seller in writing according to the payment terms specifically agreed between the parties in writing by way of Contract and/or Order Confirmation.
- 4.4 The authoritative date for timely payment shall be the date of receipt of the payment by Seller.
- 4.5 Time for payment is of the essence. In case the Buyer is late in payment, in addition to any other remedies Seller might be entitled to, interest shall accrue on any sums unpaid at the due date at a rate of One percent (1%) per month; or the maximum amount permitted by law. Interest shall accrue from the due date until the date of receipt of all outstanding payments. In addition, should Buyer make payment in currency other than invoice currency, Buyer shall compensate Seller for any exchange loss between the payment currency and invoice currency as suffered by the Seller.
- 4.6 Buyer shall not deduct or withhold from the payment any amount still in dispute where Buyer and Seller have not reached agreement or settlement, or until there is any final arbitral award or court judgment.
- 4.7 If Buyer orders Goods specifically made for Buyer, Seller may require Buyer to pay a deposit at the amount of no less than 20% of the total purchase price prior to commencement of the Seller's production. If Buyer cancels the Order or fails to pay the remainder of the purchase price when due, then, in addition to Seller's other available remedies under applicable law, Buyer shall forfeit the deposit and any rights thereon completely.

5. Retention of Title

- 5.1 Except as otherwise provided, title to Goods shall be transferred to the Buyer upon satisfaction of both of the following two conditions: (i) Goods have already been delivered to Buyer; and (ii) Seller has already received from Buyer the full purchase price. A letter of credit or bill of exchange, if any, shall not be deemed as payment.
- 5.2 Until title to the Goods passes:
 - (a) the Seller shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods;
 - (b) the Seller and its agents and employees shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods or any part are stored, or upon which the Seller reasonably believes them to be kept;
 - (c) the Buyer shall store or mark the Goods in a manner reasonably satisfactory to the Seller indicating that title to the Goods remains vested in the Seller; and
 - (d) the Buyer shall insure the Goods to their full replacement value, and arrange for the Seller to be noted on the policy of insurance as the loss payee.
- 5.3 Irrespective of whether title to the Goods remains vested in the Seller, risk in the Goods shall pass to the Buyer upon delivery.

6. Quality & Inspection

- 6.1 The Goods delivered shall satisfy the specifications and quality standard as agreed between the Buyer and the Seller, or if absent such agreed specifications and/or quality standard, satisfying OSRAM's standard specifications and the prevailing industry quality standard.
- 6.2 Upon delivery, the Buyer shall conduct an incoming inspection as to the quantity and quality of the Goods. If no objection to the quantity and apparent defect in quality is raised within five (5) working days after delivery, the Goods shall be deemed to be in full compliance with the Contract, the Conditions and the Confirmed Order and have been accepted by the Buyer with satisfactory quantity and quality and in good status. For any objection to defect of non-satisfaction of specifications and quality standard as specified in Article 6.1 raised within twelve (12) months after delivery or a specified period as provided otherwise in the contract ("Claim Period"), which is not caused by the Buyer or a third party, the Buyer may report the defect to the Seller. Defective parts shall be, at the Seller's discretion, repaired, replaced or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed. Once the Seller confirms there exists a defect, the Seller shall bear the direct expenses for repairs and/or replacements (excluding removal, installation and/or transportation of Goods and/or insurance thereon, labor and / or material costs) of the Goods. The Seller shall not be liable for any objection on quality of the Goods raised by the Buyer after Claim Period.
- 6.3 Seller expressly declares that there are no warranties of merchantability and of fitness for a particular purpose, whether express or implied, with respect to Goods sold under these Conditions. Further, except as expressly provided for in these Conditions, no other warranty, condition or term, whether express or implied is given by the Seller and all such warranties, conditions or terms are hereby excluded to the extent possible.
- 6.4 Section 6 of the Conditions sets forth the entire and sole remedy of the Buyer, and the entire and sole liability of the Seller arising from the quantity, quality, use and/or purposes of the Goods delivered. For the avoidance of doubt, such remedy does not extend to improper use or application of Goods for purposes not in line with user manual, guidance, instructions, specification or the like provided by Seller.
- 6.5 Buyer shall have no claim for damages if not provided or exceeding the claims in this Section 6. This shall not apply to the extent that a defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of the Seller.

7. Intellectual Property Right

- 7.1 All rights, title and interest in and to the Goods, the Contract, the Order and/or the Order Confirmation (and any part thereof), other than those expressly granted herein, shall remain wholly vested in Seller or its third party licensors. Buyer acknowledges that it has no rights or licenses whatsoever in respect of the Goods, the Contract, the Order or the Order Confirmation, save for those expressly granted to it by this Contract.
- 7.2 In case the Goods are manufactured by Seller with Buyer required or provided trademarks, copyrights, designs, technologies, information, patents or any other intellectual property rights, the Buyer shall ensure that manufacture and sale of the Goods by the Seller is free from any claim of infringement of any third party intellectual property rights.
- 7.3 Nothing in this Contract, an Order or Order Confirmation entitles Buyer to use any trademark of Seller or its third party licensors, or any other mark confusingly similar thereto. Without the express prior written approval of the Seller, no reference to the Seller's trade name and trademark shall be made, without limitation, on the Buyer's stationeries, business cards, sales promotional materials or web pages/social media. If the Buyer is in the business of manufacturing products which incorporate Seller's Goods, the use of Seller's trade name and trademarks on the Buyer's products is strictly prohibited, except in cases where prior written approval has been obtained.

8. Termination of Contract

- 8.1 Either party may terminate the Contract with the other party by serving six (6) months advance written notice without cause.
- 8.2 If either party is in material breach of the Contract, the non-breaching party may serve the breaching party a written notice of breach allowing the breaching party to rectify the breach in a sixty (60) day grace period. If the breaching party does not rectify the breach within such sixty (60) day grace period, the non-breaching party may elect to terminate the Contract by serving the breaching party a thirty (30) day advance written notice.
- 8.3 If either party is insolvent, in bankruptcy, or is appointed a receiver or liquidator, or is in proceedings of similar nature, the other party may terminate the Contract with immediate effect.
- 8.4 If the Seller has reasonable grounds to have doubt on the Buyer's financial ability to pay, the Seller may require Buyer to provide security or advance payment in part or in full for any Order even if the security or advance payment is not contemplated under the Contract or in the initial Order and/or Order Confirmation. If the Buyer fails to provide such security or advance payment, the Seller may elect to terminate the Contract and/or Confirmed Order with immediate effect.
- 8.5 The Seller shall have the right to terminate the Contract and/or Confirmed Order with immediate effect if the Buyer is involved in sales of products infringing the Seller's trademark or involved in sales of non-for-sale products supplied by Seller for promotion purpose.

9. Limitation of Liability

- 9.1 Regardless of the legal theory, Seller shall not be liable for (a) business interruption, down time, inability to use Buyer's equipment; (b) loss of revenue, lost savings, profits (including without limitation production profits, operating profits and resale profits) or sales or any other loss of possible benefit of Buyer; or (c) for any special, punitive, indirect, incidental or consequential damages of Buyer. Seller's liabilities shall in no event exceed a maximum amount of the total price of the corresponding Confirmed Order. In case any breach by Seller of the Contract, the Conditions or the Confirmed Order may also give rise to a claim of tortuous act at the same time, Seller shall only be liable for breach of contract.
- 9.2 Buyer shall indemnify, defend and hold Seller harmless from and against any and all third party claims for losses, liabilities, costs and expenses, including legal fees, in relation to any loss or damage to property or injury to persons (including death) arising from (a) Buyer's breach of any of its obligations under the Contract, Conditions or Confirmed Order; (b) negligent use, abuse, misuse, misapplication, improper installation, handling or implementation of the Goods by the Buyer or its direct or indirect customers; and/or (c) any modification of the Goods by the Buyer or its direct and indirect customers without the express written authorisation of the Seller, including without limitation formulating, packaging and/or finishing the Goods in any manner whatsoever or integrating the Goods into other products.

10. Miscellaneous

- 10.1 Neither party shall be liable to the other for any breach of the Contract, or any inability or delay in performing its obligations under these Conditions or the Contract, if such breach, inability or delay is caused by any force majeure event, including without limitation the direct or indirect results of fire, natural phenomena, acts, restrictions or failure to act of any government authority, domestic or foreign, strikes, labour disputes, breakdowns or accidents to machinery, shortages of materials in the market, civil commotion, delays in transportation and other cause beyond the affected party's reasonable control ("Force Majeure"), provided that in any such event the party affected by such Force Majeure event shall use its best efforts to minimize the impact of such Force Majeure event and shall notify the other party in time.
- 10.2 Buyer shall strictly comply with all laws and regulations applicable to its performance of the obligations under the Order, Conditions or Contract, including without limitation any applicable anti-corruption laws.

- 10.3 Each party shall keep confidential, not disclose to any third party without the other party's prior written consent, and use only for the purpose of the Contract, all information marked or identified in writing as confidential that it receives from the other party under the Contract. This obligation shall not apply to information: which is or becomes public knowledge other than through a breach of any obligation of confidentiality to the disclosing party; which is independently developed by the recipient of the information; or that is lawfully received from a third party. This obligation shall survive the expiry or termination of the Contract or the sales relation between the Buyer and the Seller for a period of three (3) years.
- 10.4 Except as otherwise provided in the Contract, the Contract and the Conditions shall be governed by the law of Japan. The United Nations Convention on Contracts for the International Sales of Goods is excluded.
- 10.5 References to OSRAM fiscal year shall mean the period from October 1 of a year to September 30 of the subsequent year.
- 10.6 The Conditions and all Confirmed Orders shall be an integral part of the Contract. The Contract, the Conditions and any and all Confirmed Orders shall constitute the entire Contract between Buyer and Seller.
- 10.7 Should any individual clause of these Conditions be held to be illegal, unenforceable or unfeasible, the remaining clauses shall remain in full force and effect.
- 10.8 Seller has specially reminded Buyer of those provisions hereunder limiting or exempting Seller's liability and/or increasing Buyer's liabilities and has explained to the Buyer such provisions as required by buyer. Buyer has carefully read, sufficiently understood and voluntarily accepted such provisions.

11. TRANSFERABILITY

Seller may, without the consent of Buyer, assign and transfer this Agreement to a successor in business or an acquirer of all or a substantial part of the business whether by way of a share deal, asset deal or otherwise to which this Agreement pertains. Likewise, Seller may, without the consent of Buyer, while remaining entitled and obligated under this Agreement, assign and transfer the same rights and obligations under this Agreement to a successor in business or an acquirer of a substantial part of the business whether by way of a share deal, asset deal or otherwise to which this Agreement pertains in a way that both Seller and successor in business enjoy an independent contractual relationship with Buyer. Seller shall inform Buyer in writing of such assignment as well as of the date of such assignment becoming effective.

12. Export Control

- 12.1 Seller shall not be obligated to fulfill its obligation hereunder if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargos or other sanctions.
- 12.2 Compliance with Export Control Regulations
 - (a) If Buyer transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Seller or works and services (including all kinds of technical support) performed by Seller to a third party worldwide, Buyer shall comply with all applicable national and international (re-) export control regulations (e.g., the United States of America).
 - (b) If required to conduct export control checks, Buyer, upon request by Seller, shall promptly provide Seller with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Seller, as well as any export control restrictions existing.
 - (c) Buyer shall indemnify and hold harmless Seller from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Buyer, and Buyer shall compensate Seller for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Buyer. This provision does not imply a change in burden of proof.

13. Definitions

“Buyer” shall mean the entity to whom Goods are supplied or agreed to be supplied by the Seller, and is deemed to be bound by the Contract and Conditions.

“Seller” shall mean for the purpose of the Contract and Conditions, the OSRAM entity who has issued the Order Confirmation to Buyer and is bound by the Contract and Conditions.

“Conditions” shall mean the General Sales Terms & Conditions set out in this document.

“Contract” shall mean the contract and/or agreement for the sale and purchase of the Goods concluded between the Buyer and the Seller, incorporating these Conditions, and including all Orders and Order Confirmations given by the parties thereunder.

“Goods” shall mean the goods which the Seller is to supply to the Buyer under the Contract and in accordance with the Conditions.