

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

**1. General**

The General Terms of Trade contained herein apply to all deliveries made and services rendered (hereinafter "Deliveries") by OSRAM Opto Semiconductors Inc., 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. These General Terms of Trade will apply whether or not they are enclosed with the Products sold hereunder.

**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. OSRAM's acceptance of Buyer's order is expressly conditioned on Buyer's unconditional assent to these General Terms of Trade in lieu of any terms and conditions in Buyer's order or in any other Buyer communication. OSRAM hereby rejects any terms or conditions in Buyer's order or in any other Buyer communication that conflict with or that purport to add to or modify these General Terms of Trade. All such terms and conditions will be deemed stricken and will be null and of no effect. 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 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 the lower of 1.0% per month or the highest rate permissible by applicable law, 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 US Dollars on the due date.

Buyer shall only be entitled to offsetting and retention rights to the extent that Buyer's counterclaims 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**

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. 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 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 12 (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 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.

#### **8. 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).

#### **9. 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.

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

OSRAM warrants that during the period of warranty, 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 9 – Trade Acceptance).

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. Further, OSRAM shall have no obligation that any failure of a Delivery to comply with the limited warranty above results from or is otherwise attributable to: (i) misuse, neglect or accident or are handled not in conformity with the instructions recommended or given by OSRAM, (ii) 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, (iii) any failure by Buyer or a third party to comply with environmental and storage requirements for the Delivery specified by OSRAM, including, without limitation, temperature or humidity ranges; or (iv) use of the Delivery in combination with any third-party devices or products that have not been provided or recommended by OSRAM. 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 cost. 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 period of warranty for software, 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 period of 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.

THE LIMITED WARRANTY SET FORTH HEREIN IS IN LIEU OF, AND OSRAM SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM OSRAM OR ELSEWHERE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS. IF OSRAM CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THIS EXPRESS WARRANTY AND TO REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY OSRAM IN ITS SOLE DISCRETION. Buyer acknowledges and agrees that the Products have not been designed, tested or manufactured for use in applications where the failure, malfunction or inaccuracy of the Products carries a risk of death or serious bodily injury or damage to tangible property, including, but not limited to, nuclear facilities, aircraft navigation or communication, emergency systems, or other applications with a similar degree of

potential hazard. Buyer agrees to indemnify, defend and hold OSRAM harmless against any loss, liability, or damage of such kind that OSRAM incurs in connection with any use of the Products by Buyer in any such applications.

#### **11. 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.

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

EXCEPT FOR ANY INDEMNIFICATION OBLIGATIONS AND AS PROVIDED IN THIS CLAUSE AND TO THE EXTENT PERMITTED BY LAW, OSRAM IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING, PROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA STORED OR USED WITH OSRAM DELIVERIES.

EXCEPT AS PROVIDED IN THIS CLAUSE AND TO THE EXTENT PERMITTED BY LAW, OSRAM'S TOTAL AGGREGATE LIABILITY IS LIMITED TO THE MONEY PAID TO OSRAM UNDER THESE TERMS AND CONDITIONS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT THAT FIRST GAVE RISE TO SUCH LIABILITY.

THE FOREGOING LIMITATIONS SHALL NOT APPLY TO DEATH OR PERSONAL INJURY CLAIMS RESULTING DIRECTLY FROM THE NEGLIGENCE OF THE OTHER PARTY, TO FRAUD OR FRAUDULENT MISREPRESENTATION, OR TO ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

### **13. 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.

### **14. 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.

### **15. 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 of the 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.

### **16. 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.

### **17. Other Matters**

All delivery and/or service contracts shall exclusively be governed by the laws of the State of New York, without regard to its conflict of law provisions. 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 legal action or proceeding arising under these General Terms of Trade will be brought exclusively in the federal or state courts having jurisdiction in Santa Clara County, California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

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.