

OSRAM GmbH: Delivery and Payment Terms

General

1. For deliveries of OSRAM GmbH (hereinafter referred to as "OSRAM") the following terms apply, unless there is an applicable agreement in place between the parties. Deviating terms of the purchaser are not accepted by OSRAM unless OSRAM would have expressly agreed to their applicability in writing. The Delivery and Payment Terms also apply if OSRAM undertakes delivery to the purchaser without reservation being aware of adverse terms or purchaser's terms deviating from these Delivery and Payment terms.

These Delivery and Payment Terms exclusively apply vis-à-vis entrepreneurs.

2. OSRAM's offers are subject to alteration unless otherwise agreed in writing in individual cases.

Delivery

3. For OSRAM's delivery obligations, only the written order confirmation provided by OSRAM shall apply.
4. Delivery shall be made free carrier (FCA) in accordance with Incoterms® 2020.
5. Delivery delays or limitations which arise through no fault of OSRAM or which can verifiably be attributed to military mobilization, war, uprising, strike, legitimate lockout or the emergence of unforeseen obstacles outside of OSRAM's control, will result in a reasonable prolongation of the delivery deadline by the duration of the hindrance. If the hindrance lasts longer than three months, each party is entitled to withdraw from the contract. Potential considerations already provided will be refunded by OSRAM to the purchaser without delay in such case.
6. Should OSRAM be in delay regarding the delivery due to negligence, liability for damages arising from the delay (compensation in addition to performance) is limited to 5 % of the purchase price of the late delivery, and liability for damages instead of the performance is limited to 30 % of the purchase price of the late delivery. Liability for injuries to the body, life and health remain unaffected.

Warranty

7. OSRAM warrants (gewährleistet) that its products represent the state of the art and are free from defects in materials and workmanship. Expiration of standard lifetime during the warranty period does not constitute a defect. For items which are worked on and modified without OSRAM's express approval or exposed to improper conditions of use, OSRAM shall not be obliged to pay any compensation, insofar as a query concerning the item can be respectively attributed.
8. OSRAM's product descriptions do not contain any guarantee of quality.
9. Claims for defects are subject to the purchaser's statutory obligation to give notice

of defects as per § 377 HGB (German Commercial Code). The notice of defects has to be provided in writing. Rejected goods must be returned to OSRAM for inspection. In the event of a wrongful notice of defects, OSRAM is entitled to request compensation from the purchaser for expenditures incurred in this regard, unless it was not possible for the purchaser to detect that there was no defect. If the inspection reveals a construction or material or other defect, OSRAM shall make a replacement delivery or issue a credit note in the amount of the purchase price, at OSRAM's option. If OSRAM does not fulfil this duty, supplementary performance fails or is unacceptable to the purchaser; the purchaser may withdraw from the contract or reduce payment. Damage claims only exist as per the preconditions set out in lit. 11.

10. In cases pursuant to § 438 Para 1 no. 2 and § 479 Para 1 BGB (German Civil Code), claims for defects shall lapse after the periods set out therein. Claims arising from damage to health, physical injury or death and claims arising from willful or grossly negligent breach of duty shall also lapse in accordance with the legal provisions. All other claims for defects shall expire 12 months after delivery.

Damages

11. Damage claims of the purchaser are excluded unless the damage was caused willfully or grossly negligently by OSRAM or its legal representatives or agents (§ 278 BGB) or insofar as the damage does not result from a violation of a material contractual obligation. Substantive contractual obligations in this sense are such obligations which need to be fulfilled in order to allow for the proper implementation of the contract and compliance with which the purchaser may generally rely on.

Insofar as OSRAM is liable according to the previous provision, liability is limited to an amount of EUR 2 million per damage event, as long as OSRAM did not act willfully. This does not apply if, as an exception, the damage which can typically be foreseen is higher for the contract concluded. 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 the purchaser's detriment.

Liability arising from culpable damage to life, the body or health, liability in case of a quality guarantee or in case of fraudulent concealment of a default, as well as liability based on the Product Liability Act, remains unaffected.

Apart therefrom, liability claims against OSRAM are excluded. The aforementioned liability limitations apply respectively if the purchaser asserts reimbursement of expenses instead of a damage claim.

For damages caused by delay, the liability provision in lit. 6 additionally applies.

Prices and Payment Terms

12. Prices are given in the agreed currency, net (exclusive of any fees and taxes) and without deduction, and delivery in accordance with Clause 4 above. If there is statutory VAT, the prices indicated by OSRAM are exclusive VAT in the respective statutory amount.
13. If order amounts deviate from OSRAM's respective applicable standard shipping units, OSRAM will charge a surcharge per partial quantity position in an amount of € 10.00.

For orders with a net value (exclusive of any fees and taxes) less than € 500.00 per addressee OSRAM will charge a handling fee in an amount of € 25.00. The net order value is calculated exclusive of all taxes and fees charged.

For orders issued in a manner that an automated processing is not possible, OSRAM will charge a service fee of € 25.00.
14. Payment shall be affected in the agreed currency at the payment location indicated by OSRAM. The authoritative date for timely payment shall be the date of receipt of the payment by OSRAM. Unless otherwise agreed, invoices are to be paid net within 30 days of the invoice date.
15. In case of default of payment, interest on arrears amounting to 8 percentage points p.a. above the applicable basic interest rate shall be charged. The option of enforcement of a higher damage remains unaffected.
16. In case of default of payment, the purchaser shall bear the risk for currency exchange losses incurred against the claim in Euro on the due date.

Retention of Title

17. Until all claims which are due to OSRAM arising from the current business relationship with the purchaser have been fulfilled, OSRAM shall retain title to the goods delivered.

Title shall not transfer to the purchaser until OSRAM is able to dispose freely of the purchase price. Provision of a letter of credit shall not constitute payment.
18. The purchaser is only entitled to resale in accordance with orderly business operations against immediate payment or subject to retention of title. The receivables due to him from his purchasers as a result of the resale including the balance claims which result from the termination of a current account, as well as the rights to cancellation of such current account and to determination of balance claims are already now preventatively assigned from the purchaser to OSRAM. Despite this assignment, the purchaser remains authorized to collect such claims. However, OSRAM is entitled to revoke this authorization and to collect the claim themselves if the purchaser does not meet his payment obligations or has filed for insolvency. In such cases, OSRAM may demand that the purchaser notifies OSRAM of the claims that were assigned and the debtors, provides all information necessary for collection, hands over the associated documentation and informs the debtors (third parties) of the assignment.

19. Insofar as the title to goods subject to retention of title is lost in processing, blending or fusion with other objects, the purchaser shall transfer the title to the new goods to OSRAM for surety, up to the amount that corresponds to the sales price charged to the purchaser (including VAT, if any). The purchaser shall store the goods for OSRAM free of charge. If OSRAM products are sold together with other goods (not belonging to OSRAM) at a total price, the transfer is only done in the amount invoiced by OSRAM for the OSRAM products. The same applies to the extent of the transfer of a potential current account claim of the purchaser vis-à-vis his purchaser.
20. The purchaser is not allowed to pledge or transfer by way of security any goods subject to retention of title. The purchaser is obliged to inform OSRAM without delay in the event of third-party interference with the goods in retention or with claims transferred to OSRAM as a security. Insofar as the third party is not in a position to refund the judicial and extra-judicial costs of a lawsuit as per § 771 ZPO (Civil Process Code), the purchaser is liable for the losses incurred by OSRAM.
21. If the purchaser is in delay with payment, OSRAM is entitled to withdraw from the contract and request the goods to be returned.
22. OSRAM shall release securities if and insofar as the realizable value of the securities exceeds the secured claims due to OSRAM by more than 10 %, whereas OSRAM reserves the right to determine which goods or claims are to be released.
23. If retention of title is not valid according to the jurisdiction of the place in which the goods are located, the security corresponding to the retention of title in this jurisdiction is considered agreed. If the purchaser's participation is necessary for the accrual of the security, he is obliged, upon OSRAM's request, to take all measures which are necessary for the establishment and retention of such rights, insofar as is deemed reasonable.

Export Control

24. If purchaser transfers goods (hardware and / or software and / or technology as well as corresponding documentation, regardless of the mode of provision) delivered by OSRAM or works and services (including all kinds of technical support) performed by OSRAM to a third party worldwide, purchaser shall comply with all applicable national and international (re-)export control regulations. In any event Purchaser shall comply with the (re-)export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

If required to conduct export control checks, purchaser, upon request by OSRAM, shall promptly provide OSRAM with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by OSRAM, as well as any export control restrictions existing. Purchaser shall indemnify and hold harmless OSRAM 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 purchaser, and purchaser shall compensate OSRAM for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the purchaser. This provision does not imply a change in burden of proof.

25. OSRAM's obligation to fulfill this agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

Choice of Law and Jurisdiction

26. The law of the Federal Republic of Germany shall apply. The application of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (GISG) and of Private International law is excluded.
27. If the purchaser is a merchant, the place of jurisdiction shall be Munich for all disputes arising from or in connection with the contract concluded with the purchaser. However, OSRAM is also entitled to file an action against the purchaser at the purchaser's place of general jurisdiction.

Severability

28. Insofar as individual provisions of these Delivery and Payment Terms should be invalid, this does not affect the validity of the remaining provisions. In place of the invalid regulation, statutory regulations shall apply.

April 2021 (V2)