

General Performance and Service Terms for OSRAM GmbH

For the execution of services.

General

1. For services of OSRAM GmbH (hereinafter referred to as "OSRAM") the following terms apply. Deviating terms of the customer are not accepted by OSRAM unless OSRAM would have expressly agreed to their applicability in writing. The Performance and Service Terms also apply if OSRAM undertakes service to the customer without reservation being aware of adverse terms or customer's terms deviating from these Performance and Service Terms. These Performance and Service Terms exclusively apply vis-à-vis entrepreneurs.
2. OSRAM's offers are subject to alteration unless otherwise agreed in writing in individual cases.

Service

3. For OSRAM's service obligations, only the written order confirmation provided by OSRAM shall apply.
4. Service provision shall be made ex works in accordance with Incoterms® 2010.
5. Service 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 service 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 customer without delay in such case.
6. Should OSRAM be in delay regarding the service due to negligence, liability for damages arising from the delay (compensation in addition to performance) is limited to 5 % of the price of the late service, and liability for damages instead of the performance is limited to 30 % of the price of the late service. Liability for injuries to the body, life and health remain unaffected.

Confidentiality and Intellectual Property

7. The parties undertake to keep the business and trade secrets obtained in the framework of the contractual relations of the other party's secret and not unjustified to use for their own purposes. OSRAM is entitled to accomplish tasks of the customer to use subcontractors. These partners are subject to the same terms of confidentiality obligations. As part of the contractual relations obtained or derived information will be treated confidentially by the respective receiving party, provided they are not publicly known or available or were, or they were the receiving party were already known, or which the receiving party from a third party without breach of a Non-disclosure agreement.
8. The transmitting party reserves its right to all information, OSRAM also at their test methods and / or processes, in all devices and / or equipment.

Warranty

9. The notice of defects has to be provided in writing. If the inspection by OSRAM reveals a defect, OSRAM shall mend the services provided or issue a credit note in the amount of the price, at OSRAM's option. If repair fails or is unacceptable to the customer; the customer may withdraw from the contract or reduce payment. Damage claims only exist as per the preconditions set out in lit. 11.
10. Claims for defects shall lapse after the statutory periods. 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.

Damages

11. Damage claims of the customer 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 customer 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 customer'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 there from, liability claims against OSRAM are excluded. The aforementioned liability limitations apply respectively if the customer asserts reimbursement of expenses instead of a damage claims.

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

Prices and Payment Terms

12. Prices are given in the agreed currency, net (exclusive of any fees and taxes) and without deduction, on basis ex works in accordance with Incoterms® 2010. If there is statutory VAT, the prices indicated by OSRAM are exclusive VAT in the respective statutory amount.
13. Payment shall be effected 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 from the invoice date within 30 days net.
14. 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.

15. In case of default of payment, the customer shall bear the risk for currency exchange losses incurred against the claim in Euro on the due date.

Export Control

16. If customer transfers works and services (including all kinds of technical support) performed by OSRAM to a third party worldwide, customer shall comply with all applicable national and international (re-)export control regulations. In any event, customer 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, customer, 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. Customer 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 customer, and customer shall compensate OSRAM for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the customer. This provision does not imply a change in burden of proof.
17. 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.

Hazardous Material

18. Dangerous sample materials (dangerous in the meaning of the Dangerous Goods Act.) shall be announced in writing by the customer when placing the order and later be marked in accordance with the relevant regulations and packaging.

Choice of Law and Jurisdiction

19. 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.
20. If the customer is a merchant, the place of jurisdiction shall be Munich for all disputes arising from or in connection with the contract concluded with the customer. However, OSRAM is also entitled to file an action against the customer at the customer's place of general jurisdiction.

Severability

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