

Terms and Conditions of Sale for Stock and Catalogue Goods (ed 2010/02)

Unless otherwise stated by the Company in writing, the Company's General Conditions of Sale are as follows:

1. Definitions

OSRAM:	Shall mean OSRAM Australia Pty Limited.
Purchaser:	Shall mean the company, firm or persons to whom the offer is addressed and shall include executors, administrators, successors and permitted assigns.

2. General

These Terms and Conditions of Sale shall be deemed to be incorporated into any agreement between OSRAM and the purchaser. Any terms and conditions contained in any order, offer, acceptance or other document of the purchaser and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law. No variation or cancellation of any of these terms and conditions shall be binding on OSRAM unless agreed in writing by OSRAM. OSRAM's obligation to fulfil this agreement is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos [or other sanctions].

3. Severance

In the event that any provision of these terms and conditions of sale is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable then the said provision shall be deemed severed from the agreement.

4. Acceptance and Order

Unless previously revoked by written notification to the Purchaser, OSRAM's offer shall remain valid for the period as stated in the offer or, where no such period is stated, for thirty (30) days from the date thereof. All purchase orders must be made in writing, OSRAM will determine the minimum order value applicable from time to time. A surcharge may be applied for orders of less than the minimum order value.

5. Extent

Goods offered ex stock are subject to prior sale. Any delivery time offered is without obligation.

6. Cancellation or Variation

An order may, at OSRAM's option be terminated in the event of insolvency or bankruptcy of the Purchaser or of execution being levied against any of the goods of the Purchaser or the Purchaser being placed in liquidation, whether voluntary or otherwise or administration.

An order may be cancelled or varied by the purchaser only if such cancellation or variation is accepted by OSRAM in writing by issuing a cancellation number. Any such variation or cancellation shall only occur on terms which will reimburse OSRAM for any costs or loss (including but not limited to loss of profit) incurred.

OSRAM reserves the right to amend the quantities on indent deliveries to a maximum 5% of original order quantity.

7. Quoting & Pricing

All quotations are made, all orders are accepted, goods are sold, and service and advice rendered subject only to these Terms & Conditions and to the exclusion of any Conditions of Purchase. Any variations in these Conditions must be expressly accepted by us in writing.

Our quotations are invitations to treat and not offers to sell. Orders submitted in the terms of our quotations will not be binding until accepted by us. The prices charged shall be OSRAM's prices as agreed in writing otherwise at the ruling date of delivery ex OSRAM's store. The price offered is based on full carton quantities only and upon the quantities referred to in the offer. OSRAM reserves the right to amend the prices in line with the price list or to round any ordered item to full case quantity or minimum order quantity (MOQ) without further correspondence. All information on order confirmations are deemed correct unless notified otherwise to Customer Services within 24 hours. The customer must notify OSRAM of a pricing claim, in writing, within twenty one (21) working days of invoice date, after this time period no claims can be entertained. OSRAM undertakes to investigate, and credit where appropriate.

The prices of goods which are not sold ex OSRAM's stock but imported for individual Purchaser's requirements are based on the quoted or the date of the offer ruling rate of exchange and shall be subject to adjustment in respect of any variation due to exchange fluctuation. A calculation will be made at the date of invoicing, crediting or debiting the Purchaser with any variation which has occurred between the quoted exchange rate and the Westpac Banking Corporation Spot Selling Rate applying at the date of Invoicing. Should any further significant variation occur between the date of invoicing and the tenth banking day following that on which Purchaser's payment is received by OSRAM a further adjustment may be made.

8. Information and Drawings

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by OSRAM or otherwise contained in catalogues, price lists and other advertising matter of OSRAM are approximate only and are intended to be by way of a general description of the goods and shall not form part of the contract.

9. Packing

Unless otherwise stated in the offer the prices include packing in accordance with OSRAM's customary standard of packing. Any other packing requested by the Purchaser or deemed necessary by OSRAM will be charged for in addition to the price offered.

10. Delivery

Any date quoted for delivery is an estimate only unless a guarantee shall have been given by OSRAM in writing. The purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by OSRAM to deliver by the quoted date. Written advice to the purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.

OSRAM shall not be liable to any purchaser or any other party for any loss or damage including direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of OSRAM or any other party, actions constituting fundamental breach of contract, strike or any other industrial action, or any other cause whatsoever.

OSRAM reserves the right to deliver by instalments and if delivery is made by instalments the purchaser shall not be entitled to terminate or cancel the contract.

OSRAM reserves the right to choose the method of transport. The Customer will sign, at the time of delivery, the Delivery Note or other delivery documentation for receipt of the goods. If the Customer signs "unexamined" or similar, OSRAM will deem this to be an acknowledgement of receipt of all cartons or packages specified on the Delivery Note.

Unless otherwise stated in writing the price includes the delivery of the goods ex works as defined under Incoterms 2000 (as amended from time to time) where stocked. If delivery is required beyond this point OSRAM may, at OSRAM's discretion agree to act as agent for the Purchaser in this matter and all costs for carriage and insurance will be to the Purchaser's account.

Delivery delays or limitations arising through no fault of our own or which can demonstrably be attributed to military mobilisation, war, uprising, strike, lockout or the emergence of unforeseen obstacles outside OSRAM or the supplier's control, shall not entitle the customer to withdraw orders. In this case, the delivery deadline shall be extended accordingly.

11. Storage

If after notification that the goods are ready for delivery, delivery is delayed for any reason beyond OSRAM's reasonable control OSRAM shall be entitled, at its option, to arrange suitable storage at its premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the goods. The Purchaser shall accept all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

12. Risk

The goods sold shall be at the Purchaser's risk immediately upon dispatch to the Purchaser or Purchaser's agent or where dispatch is delayed, risk shall pass to the Purchaser after fourteen (14) days from the date of notification that the goods are ready for delivery.

13. Title

Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of OSRAM as full legal and equitable owner until such time as the purchaser shall have paid OSRAM the full purchase price together with the full price of any other goods the subject of any other contract with OSRAM.

The purchaser acknowledges that he receives possession of and holds goods delivered by OSRAM solely as bailee for OSRAM until such time as the full price thereof is paid to OSRAM together with the full price of any other goods then the subject of any other contract with OSRAM.

Until such time as the purchaser becomes the owner of the goods, he will;

- store them on the premises separately;
- ensure that the goods are kept in good and serviceable condition;
- secure the goods from risk, damage and theft; and
- keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the purchaser.

Until the goods are paid for in full, OSRAM authorises the purchaser to sell the goods as its agent. However, the purchaser shall not represent to any third parties that it is acting in any way for OSRAM. OSRAM will not be bound by any contracts with third parties to which the purchaser is a party. Records shall be kept by the purchaser of any goods owned by OSRAM. The proceeds of any sale of the goods shall be paid into a separate account and held in trust for OSRAM. The purchaser shall account to OSRAM from this fund for the full price of the goods. The purchaser is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the purchaser shall account forthwith to OSRAM for the price of the goods.

Should the purchaser die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, OSRAM may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract suspend or cancel this contract or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

In the event that the purchaser uses the goods/product in some manufacturing or construction process of its own or some third party, then the purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for OSRAM. Such part shall be deemed to equal in dollar terms to the amount owing by the purchaser to OSRAM at the time of the receipt of such proceeds.

If the purchaser does not pay for any goods on the due date then OSRAM is hereby irrevocably authorised by the purchaser to enter the purchaser's premises or any premises under the control of the purchaser as agent of the purchaser and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the purchaser whatsoever.

On retaking possession of the goods OSRAM may elect to refund to the purchaser any part payment that may have been made and to credit the purchaser's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

14. Sales Tax, GST and Government Imposts

The prices offered are exclusive of Sales Tax, GST, or other Government Imposts. Should such charges become applicable they will be for the Purchaser's account.

15. Terms of Payment

Unless otherwise stated in the offer, prices offered are strictly net. Payments due to OSRAM shall be made in full not later than thirty (30) days end of month from the date of the invoice. OSRAM reserves the right to deliver and invoice any item or items comprising the whole or part of any order or to proceed in accordance with Clause 11 hereof.

If delivery is delayed as a result of circumstances beyond the reasonable control of OSRAM then fourteen (14) days after notification by OSRAM that the goods, or part thereof are ready for delivery, payment of 50% of the contract price applicable to the goods or part thereof referred to in the notice of delivery, shall fall due and be paid, the balance becoming payable on delivery or within three (3) months of the date of such notification, whichever is the earlier.

Should the Purchaser delay in respect of any payment due to OSRAM then OSRAM shall have the right, in addition to all other rights to which OSRAM is entitled at law, to charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate prescribed by the Westpac Indicator Lending Rate for Overdrafts above \$100,000.00 calculated from the date of invoice to the actual date of full and final payment. Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment if any shall be applied in reduction of the outstanding balance of the contract price.

Customers with rebate schemes will incur a late payment rebate penalty whereby each late payment received (e.g. cleared funds in our bank) after the due date will incur a 10% deduction from total rebate entitlement.

Payment via the Credit Card facilities is only offered for payment within 15 days from invoice. OSRAM will charge a 2% handling fee after 15 days.

The extension of credit facilities is in any case at the discretion of OSRAM and is subject to confirmation on the receipt of an order however in any event OSRAM retains the right to withdraw credit facilities at any time prior to delivery without further notification.

16. Goods returned for Credit

Goods will not be accepted for return except in certain cases, with prior written approval from OSRAM. A returns request must be submitted in writing quoting the original invoice number and upon subsequent issue of a RAN (Returns Authority Number) prior to return.

Credit will not be given for goods returned without above authorization or where incorrect goods have been returned, in such cases OSRAM reserves the right to request a collection of such goods within 5 working days after which goods will be destroyed and no credit issued.

Returned goods shall be delivered to OSRAM free of charge, in good order, in full case quantities, in the original undamaged/unopened/unmarked packaging, unused, in saleable condition and still be in the current catalogue. Goods will not be accepted into warehouse without accompanying RAN (Return Authority Number) and all returns must be clearly labelled.

Except where goods have been wrongly or over supplied, a charge as determined by OSRAM will be made for handling costs. A minimum restocking fee of \$50.00 or 15% of the sale price of the goods returned, whichever is the greater, will apply for purchaser initiated returns.

Goods supplied or made to special order, indent items or for close out deals cannot be returned or credited unless not to specifications or otherwise not in accordance with any expressed or implied term of the contract. Goods are credited at the original invoice amount or if unclear at the lowest price over past 12 months.

17. Loss or damage in Delivery

Shortages and/or damages in transit must be clearly stated by the customer on the Delivery Note at the time of delivery. OSRAM undertakes to investigate, and credit where appropriate. Where a copy Delivery Note is required after 90 days of delivery then OSRAM reserves the right to charge \$75 per request.

Where shortages and/or damages are not apparent at the time of delivery, the customer must notify OSRAM, in writing, within three (3) working days of receipt of delivery. OSRAM undertakes to investigate, and credit where appropriate.

Where an entire delivery has not been received, the customer must notify OSRAM, in writing, within seven (7) working days of the date of the invoice. OSRAM undertakes to investigate, and credit where appropriate.

18. Warranty

OSRAM shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with OSRAM or occasioned to the purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of OSRAM its servants or agents.

The goods are sold and service, information and advice rendered on the understanding that the buyer is solely responsible for determining the suitability of the goods for the intended use.

Accordingly our liability for any loss, damage or injury suffered by the buyer (or third parties) and arising by reason of defects in the goods or otherwise howsoever shall be limited to the invoice price of the goods in respect of or in relation to which loss or damage is claimed and shall be in lieu of any warranty or condition implied by law.

OSRAM shall not be liable in any circumstances for any;

- (i) defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation repair or alteration (other than by) or accident.
- (ii) any transport freight charges installation removal labour or other costs;
- (iii) defects in goods not manufactured by it but will endeavour to pass on to the purchaser the benefit of any claim made by OSRAM and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the purchaser to proceed against OSRAM pursuant to the Trade Practices Act 1974.
- (iv) technical advice or assistance given or rendered by it to the purchaser or not in connection with the manufacture construction or supply of goods for or to the purchaser provided always that OSRAM has rendered such services with due care and skill and that any material supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not the loss or damage is caused by negligence or actions constituting fundamental breach of contract.

Insofar as goods or services supplied by OSRAM are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the purchaser establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty; implied into this contract by the Trade Practices Act 1974 (other than a condition implied by Section 69) is limited:

- (a) in the case of goods to any one of the following as determined by ;
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the costs of having the goods repaired;
- (b) in the case of services to any one of the following as determined by ;
 - (i) the supplying of the services again, or
 - (ii) the payment of the cost of having the services supplied again.

OSRAM shall not be liable for goods whose average rated life has been exceeded or where any unauthorised repair or alteration to the goods has been performed by the Purchaser or others.

Claims arising from damage to health, physical injury or death and claims arising from wilful or grossly negligent breach of duty shall lapse in accordance with the legal provisions. All other claims for defects shall expire. Expiration of the normal lifespan of the goods within the warranty period shall not constitute a defect.

Pleas or objections shall not confer on the customer the right to stop payments, modify the method of payment or offset payment against its own claims, unless these are undisputed or legally established. In case of defects, the customer's payments may only be withheld in an amount proportionate to the value of the queried item.

In the event of intent and gross negligence in cases of claims for damages arising from damage to health, physical injury or death or from the assumption of delivery or quality guarantees, in cases of malicious concealment and in cases of claims based on the Product Liability Act, we shall be liable in accordance with the legal provisions. If we are in culpable breach of an essential obligation or cardinal obligation, or if the client is entitled to claims for compensation of damage in place of performance, the liability shall be limited to compensation for typically occurring, foreseeable damages. No other claims for damages (e.g. damage compensation and reimbursement of expenses) may be asserted against us.

Where in accordance with the foregoing, the Purchaser has notified OSRAM of an alleged defect, he shall if OSRAM so requires promptly and at his expense and risk, return the defective part(s) to OSRAM.

The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Purchaser at his own expense. Where any defective part(s) has been replaced such part(s) shall become the property of OSRAM.

19. Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of OSRAM, OSRAM is unable to perform in whole or in part any obligation under this agreement, OSRAM shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the purchaser in respect of such inability.

20. Patents and Design Rights

In the event of any claim or claims in respect of any infringement of a Registered Design, Trademark, Copyright or Letters Patent, the specification of which is published prior to the date of the offer relating to any part of the goods supplied by OSRAM (other than a part based on a design specified by the Purchaser) OSRAM will at their expense either replace or modify such part with a

non-infringing part or procure for the Purchaser the right to use such a part provided OSRAM is given full opportunity to conduct all negotiations in respect of such claim and such claim shall not be accepted by the Purchaser without the prior written consent of OSRAM. In no event shall OSRAM incur any liability for losses arising from the use or non-use of any infringing part. The Purchaser warrants that any design or instructions furnished or given by him shall not be such as to cause OSRAM to infringe any Letters Patent, Registered Design, Trademark or Copyright in the-execution of the order.

The patent and design rights held by OSRAM and relating to goods offered or supplied by OSRAM shall remain the absolute property of OSRAM and OSRAM's designs and drawings shall not be reproduced or disclosed without OSRAM's written consent. The Purchaser will not, without OSRAM's prior written consent, copy or allow others to copy any drawings, goods or part thereof supplied by OSRAM.

21. Jurisdiction

The parties agree that the terms and conditions applying to any credit account opened in the name of the applicant and any other contract between OSRAM and the purchaser shall be governed by the laws of the State of New South Wales in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said contract.

22. Legal Construction

The contract shall be construed and operate in conformity with the laws of the State of New South Wales which is hereby deemed to be the proper Law of the Contract.

23. Information

OSRAM may give information about the Purchaser to a credit reporting agency, but only limited types of information allowed under Section 18 E (1) of the Privacy Act 1998 (Commonwealth). This information may be used to assess the credit worthiness of the Purchaser.

24. Electronic Transactions

All transactions conducted through the OSRAM E-commerce internet web site will be subject to the full conditions contained in this document, unless otherwise stated. Orders placed using Purchaser usernames and passwords will be considered authorised and confirmed at the time of placing the order. Purchaser is responsible for security of passwords used for their transactions.

25. Electronic Communication

In order to provide customer service, credit account information, sales, marketing or product information OSRAM may contact purchaser electronically by email or other media unless specifically requested not to do so.

If a dispute arises between the parties, then the parties agree to (must) undertake the following steps:

26. Dispute Resolution

- (i) If a dispute arises between the parties, then the parties agree to (must) undertake the following steps:
 - a. The complainant shall raise the matter with the other party setting out the background and the issues in dispute, and the outcome desired.
 - b. If the dispute is not resolved in accordance with clause (a), the complainant shall raise the matter with OSRAM Australia's head of finance. The parties shall make every effort to resolve the dispute fairly. In doing so, each party agrees to use its best endeavours to:
 - (i) clearly communicate the background facts leading to or causing the dispute;
 - (ii) set out clearly what action is required to settle the dispute;
 - (iii) select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution of the dispute;
 - (iv) discuss specific means of avoiding such disputes arising in the future.
 - c. If the dispute is not resolved in accordance with clause (26.b), then the complainant may refer the matter to its industry association for assistance or to an ADR provider in accordance with clause (26.d).
 - d. If the dispute is not resolved in accordance with clause (26.c), then the matter shall be referred to mediation/conciliation (or other agreed form of ADR) to be facilitated by an agreed alternative dispute resolution provider.
- (ii) Action taken to settle the dispute at each stage must be undertaken promptly.
- (iii) The parties shall equally share the costs associated with the appointment of an agreed alternative dispute resolution provider.

27. Export Control

- (i) 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 Purchaser shall comply with all applicable national and international (re-) export control regulations.
- (ii) Prior to any transfer of goods, works and services provided by OSRAM to a third party Purchaser shall in particular guarantee that
 - a) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations, also considering the limitations of domestic business and prohibitions of by-passing;
 - b) Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
 - c) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
- (iii) 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.
- (iv) 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.

