

**PHILIPS LIGHTING UK LIMITED (“PHILIPS”)**  
**GENERAL CONDITIONS OF SALE**

**1 QUOTATIONS AND ORDERS**

- 1.1 These Conditions apply to and form an integral part of all quotations, offers, acceptances, acknowledgments and confirmations by Philips of any orders by Customer, unless and to the extent Philips explicitly agrees otherwise in writing.
- 1.2 Any terms and conditions on any documents issued by Customer either before or after issuance of any document by Philips referring to these Conditions are explicitly rejected and disregarded by Philips, and any such terms shall be wholly inapplicable to any sale by Philips to Customer and shall not be binding in any way on Philips.
- 1.3 A quotation will be valid for the period stated by Philips, or where no period is stated, within 30 days from the date of the quotation.
- 1.4 No order submitted by Customer shall be deemed accepted by Philips unless and until confirmed in writing by Philips.

**2 PRICES AND PAYMENT**

- 2.1 Unless otherwise agreed in writing between Philips and Customer, prices shall be those applicable at the date of the invoice, exclusive of VAT.
- 2.2 Philips reserves the right to vary the price of goods to take account of any variations in costs including but not limited to any foreign exchange rates, raw materials and other costs of manufacture and distribution, taking effect between quotation and delivery.
- 2.3 Customer shall pay for the Goods (less any discount to which it is entitled but without any other deduction) not later than the last bank working day of the month following the month in which the Goods were invoiced, unless otherwise agreed in writing. Any query by Customer relating to an invoice must be made in writing within 30 days of the date of invoice.
- 2.4 Philips shall be entitled to bring an action for the price whether or not the property in the Goods has passed. Time for payment shall be of the essence.
- 2.5 In the event of default in payment by the due date, Philips reserves the right to charge interest on money overdue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), until payment in full is made, and to suspend delivery or terminate the contract in respect of any undelivered Goods, and appropriate any payment made by Customer as Philips thinks fit.

**3 DELIVERY**

- 3.1 A delivery date shall be treated as being approximate and Philips shall not be liable for any delay in delivery, provided that it uses commercially reasonable efforts to meet the delivery date. Philips reserves the right to charge for any special delivery arrangements and for all pallet equipment not returned to Philips within 60 days of receipt.
- 3.2 Customer will sign an advice note on receipt of the Goods. If Customer specifies “unexamined” or similar wording Philips will treat that as confirmation of receipt of all the Goods in the advice note. Any loss or damage to Goods found on delivery, and any non-delivery of a whole consignment, must be notified in writing to the carrier and to Philips within 7 days. Damaged Goods and associated packaging should be retained for examination.
- 3.3 If Customer fails to take delivery or give adequate instructions or requests Philips to hold the Goods after the agreed date for delivery, payment will be due and payable 30 days from the date the Goods were available for dispatch, or Philips may at its option sell the Goods and (after deducting all reasonable storage and selling expenses) charge Customer for any shortfall below the contract price.
- 3.4 Philips shall be entitled to determine the route and manner of delivery of the Goods, and make partial deliveries of the Goods or deliver the Goods in instalments.
- 3.5 Where Goods are to be delivered in instalments, each delivery shall constitute a separate contract.

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**4 TITLE AND RISK**

- 4.1 Immediately upon delivery, risk in the Goods will pass to Customer.
- 4.2 Title in the Goods will not pass to Customer until Philips has received full payment for:
- 4.2.1 the Goods;
- 4.2.2 for any other Goods that Philips has sold to Customer for which payment is outstanding.
- 4.3 Until title passes Customer holds the Goods on behalf of Philips as bailee and must keep the Goods free from any charge, lien or other encumbrance and shall keep the Goods identifiable and separate from other property in its possession.
- 4.4 Customer has the right to resell the Goods but not as Philips’ agent and Philips may terminate that right at any time prior to full payment being made but in any event upon the insolvency of Customer.
- 4.5 In the event of a breach of these Conditions, Customer shall fully cooperate with Philips in order to enable Philips (or its representative) to collect the Goods.

**5 RETURN OF GOODS**

Goods delivered will not be accepted for return, nor any credit given, without prior written consent of Philips and unless the Goods are returned in accordance with any applicable Philips’ return procedure. Any costs incurred by Philips in handling or disposing of the Goods will be borne by Customer.

**6 WARRANTY**

- 6.1 Philips warrants that at the time of delivery, the Goods will correspond with their specification and will be free from defects in material and workmanship for the relevant Philips business’s stated warranty period, subject to the following conditions. Philips shall be under no liability in respect of:
- 6.1.1 any defect in the Goods arising from designs or specifications supplied to Philips by Customer;
- 6.1.2 any defect arising from Customer’s failure to follow Philips’ instructions in relation to proper use and storage of the Goods;
- 6.1.3 any defect arising as a result of: excessive wear and tear; the Goods being incorrectly fitted; being subjected to neglect, carelessness or abnormal conditions; accident; or any attempt at repair, replacement or modification made without the prior written agreement of Philips;
- 6.1.4 any labour costs, (de)mounting and/or (de)installation of the Goods.
- 6.2 Philips shall be under no liability under clause 6.1 where the terms of payment set out in clause 2 have not been complied with by Customer.
- 6.3 If a Customer notifies Philips that it has a claim and if Philips reasonably agrees that the claim is valid, Philips has the option to refund the cost of the Goods, or repair or replace the Goods. Philips is entitled at its option to replace the defective or non-confirming Goods with goods that have minor deviations in design and/or specifications not affecting the functionality of the agreed Goods.

**7 REMEDIES AND LIMITATION OF LIABILITY**

**The following sets out Philips’ liability to Customer in respect of or in connection with the supply or any failure to supply Goods under these Conditions, whether in contract or tort, including negligence, and are Customer’s sole remedies in respect of any act or default on the part of Philips.**

- 7.1 **Philips will accept liability for death or personal injury resulting from its negligence, for any breach by it of Section 12 of the Sale of Goods Act 1979, for fraud or for fraudulent misrepresentation, and for any other liability which cannot be excluded by law.**

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- 7.2 **Philips will accept liability for direct physical damage to the tangible property of Customer to the extent that it is caused by the negligence of Philips, subject to the exclusions set out in clause 7.4 and up to a maximum limit of £2,000,000 in aggregate**
- 7.3 **Except as provided in clauses 7.1 and 7.2, Philips’ total liability in respect of any one default will not exceed 125% of the total purchase price of all the Goods in respect of which Philips is in default. If a number of defaults give rise to substantially the same loss or are attributable to the same or similar cause, then they will be regarded as giving rise to only one claim. Philips will be given a reasonable opportunity to remedy any default.**
- 7.4 **Except as provided in clause 7.1 and 7.2 Philips will not be liable for:**
- 7.4.1 **loss of business, revenue, profits, anticipated savings (even where the same arise directly from a breach of these Conditions); or**
- 7.4.2 **special, indirect or consequential loss, even if such loss is foreseeable by or in the contemplation of Philips.**
- 7.5 **Except as expressly stated in this clause 7 all conditions and warranties implied, statutory or otherwise are excluded to the maximum extent permitted by law.**
- 7.6 **Any claims for rebates or credits shall only be valid if made within 3 months of the expiry of the period to which any written agreement to give such rebates or credits applies, or where no such agreement has been made, within 12 months of any grounds for such claim.**
- 8 INTELLECTUAL PROPERTY**
- 8.1 Where software or documentation is embedded in or delivered with the Goods, the sale of the Goods shall not constitute a transfer of title in the same to Customer but shall only imply a non-exclusive and non-transferable licence of any intellectual property right, including but not limited to patent, copyright, trademark, design right or trade secret (“IPR”) belonging to Philips, to use the same with, and as embedded in or delivered with, the Goods as supplied by Philips.
- 8.2 Notwithstanding anything to the contrary herein, these Conditions shall not be construed as conferring any right, licence or immunity, either directly or by implication, estoppel or otherwise to Customer or any third party under any Philips IPR or IPR of any third party other than explicitly granted under these Conditions.
- 8.3 Customer shall not:
- 8.3.1 modify, adapt, alter, translate or create derivative works from any software embedded in or provided by Philips with the Goods;
- 8.3.2 assign, sub-license, lease, rent, loan, transfer, disclose or otherwise make available such software;
- 8.3.3 merge or incorporate such software with or into any software, or
- 8.3.4 reverse assemble, decompile, disassemble or otherwise attempt to derive the source code for such software, without written authorization from Philips, except as expressly permitted under English law.
- 8.4 Customer shall reproduce, without any amendments or changes, any proprietary rights legends of Philips and/or its affiliates or its third party suppliers in any software or documentation provided by Philips.
- 8.5 If to the extent copyright in the software is owned by third parties, the licence terms of these third parties shall apply instead of these Conditions to such third party software.
- 8.6 Philips, at its sole expense, shall:
- 8.6.1 defend any legal proceedings brought by a third party against Customer to the extent that the proceedings include a claim that the Goods directly infringe the claimant’s IPR; and
- 8.6.2 hold Customer harmless against damages and costs awarded by final judgment in such proceedings to the extent directly and solely attributable to such infringement.
- 8.7 Philips shall have no obligation or liability to Customer under clause 8.6:

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- 8.7.1 if Philips is not promptly notified in writing of any such claim and given sole right to control and direct the investigation, preparation, defence and settlement of such claim, including selection of counsel, with the full reasonable assistance and cooperation of Customer;
  - 8.7.2 if the claim is made after a period of 3 years from the date of delivery of the Goods;
  - 8.7.3 to the extent that any such claim arises from modification of the Goods, or design, specifications or instructions furnished by Customer;
  - 8.7.4 for unauthorized use or distribution of the Goods or use beyond the specification of the Goods;
  - 8.7.5 for any costs or expenses incurred by Customer without Philips' prior written consent;
  - 8.7.6 for the infringement of any third party's IPR with respect to which Philips has informed Customer, or has published a statement, that a separate licence has to be obtained.
- 8.8 For such claims of infringement referred to in clause 8.7, Customer shall indemnify Philips and its affiliates against any losses, damages, costs or liabilities in respect of such claims.
- 8.9 If the Goods are, or in Philips' opinion are likely to become, the subject of a claim of infringement as referred to in clause 8.6, or if Philips receives a third party IPR infringement claim in relation to the Goods, Philips shall have the right, without obligation or liability, and at its sole option to:
- 8.9.1 procure for Customer the right to continue to use or sell the Goods; or
  - 8.9.2 provide non-infringing replacement Goods; or
  - 8.9.3 modify the Goods in such a way as to make the modified Goods non-infringing; or
  - 8.9.4 repurchase the Goods from Customer for the initial price paid by Customer less reasonable depreciation; or
  - 8.9.5 suspend or discontinue supplies to Customer of the Goods or parts to which such notice relates; or
  - 8.9.6 terminate any agreement to the extent related to the Goods.
- 8.10 Subject to the exclusions and limitations set forth in clause 7, the foregoing states Philips' entire liability and obligation to Customer and Customer's sole remedy with respect to any actual or alleged infringement of any IPR or any other proprietary rights of any kind.

**9 BREACH**

- 9.1 Without prejudice to any other right or remedy, a party not in breach will be entitled to consider the other party in breach and may promptly terminate any contract and/or suspend any further deliveries and bring an action in accordance with clause 2.4 if:
- 9.1.1 a party commits a material breach of the contract and fails to remedy the same within 14 days of receiving written notice to remedy from the other party (however, late payment requires no such notice); or
  - 9.1.2 either party or its parent or subsidiary companies as defined in s1159 of the Companies Act 2006 make any voluntary arrangement with creditors or becomes subject to an administration order, or if an individual or firm, becomes bankrupt or, if a company, goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 9.1.3 a receiver or administrative receiver is appointed over, or an encumbrancer takes possession of any of a party's property or assets or the property or assets of its parent or subsidiary companies or a party ceases trading or threatens to cease trading or any distress or execution is levied on a party, its goods or assets; or
  - 9.1.4 the control or ownership of Customer changes; or
  - 9.1.5 a party has reasonable cause to believe that any of these events is about to occur to the other party.

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**10 CONFIDENTIALITY**

Customer acknowledges that all technical, commercial and financial data disclosed to Customer by Philips and/or its affiliates is the confidential information of Philips and/or its affiliates. Customer 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 by the parties and in conformance with the purchase of the Goods.

**11 EXPORT CONTROL**

If the delivery of the Goods is restricted or prohibited due to export control regulations, the rights and obligations of Customer will be suspended for the duration of such restrictions or prohibitions, and this agreement may be cancelled without liability. Customer warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in any applicable export control laws and regulations or export licenses and that it will impose the same on any third party to whom the Goods are sold. Customer shall take all actions which may be reasonably necessary to ensure that no such party or end-user contravenes such regulations and shall indemnify Philips and its affiliates against any losses, damages, costs or liabilities arising from claims resulting from Customer's or its customers' breach or non-compliance with this clause.

**12 GENERAL**

- 12.1 Neither party shall be liable to the other for any breach arising from, (and Philips may in its discretion allocate products, so as to supply fewer Goods than agreed, in case of), events beyond the reasonable control of such party or its sub-contractors or suppliers including but not limited to acts of God, war, riot, fire, strikes, terrorism, lock-outs or other forms of industrial action.
- 12.2 These Conditions may not be amended, varied or modified except in writing signed by a duly authorised officer or representative of each of the parties.
- 12.3 Failure or delay by a party in enforcing or partially enforcing any provision of these Conditions shall not be construed as a waiver of any of its rights under any contract.
- 12.4 If any provision of these Conditions is found to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected by that invalidity or unenforceability.
- 12.5 These Conditions are subject to English law and the parties submit to the non-exclusive jurisdiction of the English Courts.
- 12.6 Any terms and conditions which by their nature extend beyond expiration or termination of these Conditions shall survive and remain in effect.
- 12.7 Prices do not include any fees arising from the WEEE Directive or similar legislation, and such additional costs will be invoiced to and payable by Customer.
- 12.8 Each of the parties acknowledges that, in entering into this agreement, it has not relied on any oral or written representation, warranty, or other assurance (including any information contained in catalogues, price lists, advertising matter and specifications), except as provided for or referred to in these Conditions.
- 12.9 **IMPORTANT – ETHICAL COMPLIANCE** – Philips expects its customers to uphold the highest ethical standards and to comply fully with The Bribery Act and with all other applicable legislation relating to bribery and corrupt practices (which may include the United States Foreign Corrupt Practices Act). Customer will fully co-operate with Philips (including by the provision of any relevant documents or other information) in the event that Philips receives information of Customer's non-compliance with such standards. If the Customer fails to comply with the terms of this clause, Philips shall be entitled to terminate any agreement without liability and Customer shall indemnify Philips against any losses, damages, costs or liabilities which may arise.