

Terms and Conditions - Evaluation of LED Electronics Materials

These Terms and Conditions – Evaluation of LED Electronics Materials (“these Terms”) apply to the supply and use of Materials (as defined below) provided by Signify (as defined below) to a customer requesting the Materials (“**Signify**”).

1. Definitions.

“**Agreement**” means the agreement for the supply of the Materials by Signify to Company which is solely governed by these Terms and these Terms set out the entire terms and conditions applicable thereto.

“**Affiliate(s)**” means, (a) in respect of Signify, Philips Lighting N.V. and any legal entity, which is directly or indirectly owned or controlled by Signify N.V.; and (b) in respect of Company, any legal entity, which is directly or indirectly (i) owned or controlled by Company; (ii) owning or controlling Company; or (iii) owned or controlled by the legal entity owning or controlling Company. For the purposes of this definition, a business entity shall be deemed to own or to control another entity if more than 50% (fifty per cent) of the voting stock of the latter legal entity, ordinarily entitled to vote in the election of directors (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter legal entity) is held by and consolidated in the annual accounts of the owning or controlling legal entity or if such owning or controlling legal entity otherwise has the ability to direct the business activities of such legal entity.

“**Evaluation**” means evaluating the functionality of the Materials to ascertain if the Materials meet the Company’s requirements.

“**Intellectual Property Rights**” means, without limitation, patents, utility models, designs or plant variety rights and any applications for any of the foregoing.

“**Invention**” means an invention or any other subject matter, whether capable of protection by Intellectual Property Rights or not, which invention is made or subject matter is generated within the framework of the Evaluation.

“**Materials**” means product sample(s) of LED Electronics products as provided by Signify to Company.

“**Parties**” means Signify and Company, and “**Party**” shall mean either of them as the context may indicate.

“**Signify**” means the legal entity within the Philips Lighting Group established within the country of Company’s registered office.

“**Signify Group**” means Signify N.V. and its Affiliates.

2. Use of the Materials.

The Materials are considered confidential and proprietary to Signify and are provided to Company for performing the Evaluation only. Company will have the Materials handled, stored, used and disposed by qualified staff and in accordance with applicable governmental rules, regulations

or law. Upon first request of Company, Signify will, together with the Materials, provide Company with any instructions for the handling, storage, use and disposal that are specific to the Materials.

3. Conditions and Restrictions.

The right to use the Materials granted under clause 2, does not include the right to modify, reverse engineer, decompile, copy or otherwise determine the structure of the Materials or any part thereof (including embedded software or firmware). Company may only distribute the Materials to its or its Affiliates’ employees under Company’s immediate and direct control and who have a need to know and are required to use the Materials for performing the Evaluation, imposing on such employees restrictions on disclosure and use same or similar to those set out herein, but in no event less restrictive than the terms and conditions set out herein. Company shall take all reasonable measures necessary to protect the Materials against mishandling, misappropriation and/or misuse by any person.

4. Intellectual Property Rights.

Except for those rights to use the Materials specifically granted in clause 2 of these Terms, Signify reserves all right, title and interest (including any Intellectual Property Rights) in and to the Materials provided to Company. No Intellectual Property Rights in the Materials are transferred. In the event that Company and/or its Affiliates makes or observes any Invention relating to the Materials or as a direct result of the Evaluation, then Company will immediately inform Signify in writing. Signify and/or its Affiliates shall solely own: (a) any Invention and/or Intellectual Property Rights claiming Inventions made by Company and/or its Affiliates relating to and/or in connection with the Materials or as a result of the Evaluation; and, (b) any Feedback (as defined in clause 6 hereof) and/or any Intellectual Property Rights therein. Company shall cause to assign to Signify all right, title and interest to such Inventions and Feedback and shall do 2 Version October 2017 everything necessary to perfect such Inventions and Feedback and to protect Signify’s interests therein. Company and/or its Affiliates shall not make any patent application or secure any other form of proprietary rights to legally protect such Inventions and/or Feedback. If Philips Lighting decides to file applications for Intellectual Property Rights, Company and/or its Affiliates will cooperate to provide the necessary information and documents and to get all required signatures.

5. Confidentiality.

The Materials, the Feedback and all other information disclosed during the Evaluation shall constitute "Confidential Information" of Signify and its Affiliates. For a period of five (5) years from delivery of the Materials, Company and its Affiliates shall not disclose Confidential Information to any third party and shall not use and/or employ Confidential Information for any purpose other than expressly provided herein, unless and to the extent the Company and/or its Affiliates can prove by written record that: (a) it already had knowledge of such information prior to disclosure; or (b) the information was already or becomes publicly known through no fault of Company or its Affiliates; or (c) information identical to the disclosed information was already in its possession or was subsequently lawfully obtained without restrictions to the use from a third party who is free to disclose the same; or (d) is subsequently independently developed by Company or its Affiliates without the use of Signify's and its Affiliates' Confidential Information.

6. Return & Feedback.

Upon request made by Signify, Company shall return all of Signify's Confidential Information within thirty (30) days from such request. Company shall disclose to Signify the results of the Evaluation as well as any findings, suggestions, improvements and/or feedback of Company and/or its Affiliates ("Feedback"). The Feedback may be provided in a written report or by other means that the Parties may agree to.

7. Warranty Disclaimer.

THE MATERIALS ARE PROVIDED ON AN "AS IS" BASIS. SIGNIFY, ITS AFFILIATES AND THEIR LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, EFFECTIVENESS, COMPLETENESS, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR THE PURPOSE OF PERFORMING THE EVALUATION HEREUNDER.

8. Limitation of Liability.

IN NO EVENT SHALL SIGNIFY, ITS AFFILIATES, ITS LICENSORS OR SUPPLIERS BE LIABLE TO COMPANY AND/OR ITS AFFILIATES FOR ANY DAMAGES OF ANY KIND INCURRED BY COMPANY AND/OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. THE FOREGOING SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9. Miscellaneous.

Nothing in the Agreement shall create a joint venture, partnership or principal-agent relationship between Company and Signify. The Agreement is governed by the laws of the country of Signify's registered office, without reference to its conflict of laws principles. Any dispute between the Parties regarding the Agreement shall be submitted to the competent court in such country of Signify's registered office. Company acknowledges that a breach by Company or its Affiliates of its obligations under the Agreement may cause Signify and/or its Affiliates irreparable harm and, in the event Company breaches or threatens to breach its obligations under the Agreement, Signify and/or its Affiliates shall be entitled to seek injunctive and other appropriate equitable relief in any court of any place or jurisdiction. The Agreement may be amended, altered, or modified only by a writing executed by both Parties. No waiver of any obligation or right of either Party shall be effective unless in writing, executed by the Party against whom it is being enforced. Other than an assignment to a Party's Affiliates, neither Party may assign its rights or obligations under the Agreement without the other Party's prior written consent, and any purported assignment without such consent shall have no force or effect. Company will comply with all applicable export and import control laws and regulations and, in particular, will not export or re-export the Materials without having obtained all required national and international government licenses, approvals or waivers. In the event that any provision or part of a provision of the Agreement is determined to be invalid, illegal, or unenforceable, such provision or part thereof shall be stricken from the Agreement and the remainder of the Agreement shall be valid, legal, and enforceable to the maximum extent possible. Any notice under the Agreement shall be in writing and delivered by registered mail, return receipt requested, or by nationally recognized overnight courier addressed to the Parties at their place of business or such other address that a Party may notify the other Party from time to time.