

## **TERMS AND CONDITIONS OF COMMERCIAL SALE OF PHILIPS LIGHTING LUXEMBOURG SA**

### **1. OFFER, CONFIRMATION OR AGREEMENT**

These terms and conditions of commercial sale of Philips Lighting Luxembourg SA (the “Terms and Conditions”) apply to and form an integral part of all quotations and offers made by Philips Lighting Luxembourg SA (“Philips”), all acceptances, acknowledgements and confirmations by Philips of any orders by Buyer and any agreements (“Agreement(s)”) regarding the sale by Philips and purchase by Buyer of goods and services (“Products”), unless and to the extent Philips explicitly agrees otherwise in writing.

Any terms and conditions set forth on any document or documents issued by Buyer either before or after issuance of any document by Philips setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Philips, and any such terms shall be wholly inapplicable to any sale made by Philips to Buyer and shall not be binding in any way on Philips.

Philips’ offers are open for acceptance within the period stated by Philips in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by Philips at any time prior to the receipt by Philips of Buyer’s acceptance thereof.

### **2. PRICING**

Prices in any offer, confirmation or Agreement are in Euros, based on delivery Ex-Works (INCOTERMS latest version) Philips’ manufacturing facility or other facility designated by Philips, unless agreed otherwise in writing between Buyer and Philips and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products or any other expenses. Philips will add taxes, duties and similar levies to the sales price where Philips is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.

### **3. PAYMENT**

- (a) Unless agreed otherwise between Philips and Buyer in writing, Philips may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between Philips and Buyer in writing. All payments shall be made to the designated Philips address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by Philips. In addition to any other rights and remedies Philips may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.
- (b) All deliveries of Products agreed to by Philips shall at all times be subject to credit approval of Philips. If, in Philips’ judgment, Buyer’s financial condition at any time does not justify production or delivery of Products on the above payment terms, Philips may require full or partial payment in advance or other payment terms as a condition to delivery, and Philips may suspend, delay or cancel any credit, delivery or any other performance by Philips.
- (c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, Philips shall have the right to refuse performance and/or delivery of any Products until payments are brought current and Philips may suspend, delay or cancel any credit, delivery or any other performance by Philips. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

### **4. DELIVERY AND QUANTITIES**

- (a) Products shall be delivered Ex-Works (INCOTERMS latest version) as designated by Philips, unless

otherwise agreed in writing. Delivery dates communicated or acknowledged by Philips are approximate only, and Philips shall not be liable for, nor shall Philips be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. Philips agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

- (b) Buyer will give Philips written notice of failure to deliver and thirty (30) days within which to cure. If Philips does not deliver within such thirty (30) day period, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the related Agreement.
- (c) Title in the Products shall pass to Buyer upon payment in full of the purchase price, including any interest and/or expenses in respect thereof and (to the extent permitted by applicable law) payment in full of any other Products Buyer has ordered and/or payment of any claim in connection with or arising out of the Agreement. Until title in the Products has passed to Buyer, Buyer shall not assimilate, transfer or pledge any of the Products, or grant any right or title in the Products to any third party, except in the event such right or title is granted in normal course of business. Buyer shall ensure that the Products remain identifiable as Products obtained from Philips. Buyer shall at all times grant Philips (or its representative) free access to the location where Buyer has stored the Products. In the event Buyer does not fulfill its payment obligations towards Philips, or gives reason to believe that it will not fulfill any or part of its payment obligations, Buyer is obliged at Philips' request to return to Philips, at Buyer's cost, the Products in which the title has not yet passed and Buyer agrees to fully cooperate with Philips in order to enable Philips (or its representative) to collect its Products. Risk of loss in the Products shall pass to Buyer upon Philips' delivery in accordance with the applicable INCOTERMS.
- (d) If Buyer fails to take delivery of Products ordered, then Philips may deliver the Products in consignment at Buyer's cost.
- (e) In the event Philips' production is curtailed for any reason, Philips shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be, without being responsible or liable to Buyer for any damage resulting therefrom.

## 5. FORCE MAJEURE

Philips shall not be liable for any failure or delay in performance if:

- (i) such failure or delay results from interruptions in the Product manufacturing process; or
- (ii) such failure or delay is caused by Force Majeure as defined below and/or by (case) law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Philips being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Philips' reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which Philips cannot reasonably be required to execute its obligations including force majeure and/or default by one of Philips' suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Philips to extend for a period of three (3) consecutive months), Philips shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

## 6. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

Subject to the provisions set forth herein, the sale by Philips of any goods implies the non-exclusive and non-transferable limited license to Buyer under any of Philips' and/or its affiliates' intellectual property rights ("Philips' IPR") used in the goods to use and resell the goods as sold by Philips to Buyer.

To the extent that software and/or documentation is embedded in or delivered with any goods sold by Philips to Buyer, the sale of such goods shall not constitute the transfer of ownership rights or title in such software and/or documentation to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under Philips IPR used in the software to use such software and/or documentation in conjunction with and as embedded in or delivered with the goods as supplied by Philips to Buyer.

Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as conferring any right, license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any Philips IPR or intellectual property rights of any third party other than explicitly granted under these Terms and Conditions.

Buyer shall not: (a) modify, adapt, alter, translate, or create derivative works from any software residing in or provided by Philips in conjunction with any goods; (b) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software; (c) merge or incorporate such software with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for such software without written authorization from Philips except as explicitly allowed under applicable law. Buyer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of Philips and/or its affiliates or its third party suppliers in any software or documentation provided by Philips. If and to the extent copyright in the software is owned by third parties, the license terms of these third parties shall apply instead of the present Terms and Conditions to such third party software.

#### 7. LIMITED WARRANTY AND DISCLAIMER

- (a) Philips warrants that under normal use in accordance with the applicable user manual the Products, (excluding any software that is not embedded in or delivered with any goods by Philips or software which is subject to copyright owned by a third party) shall, at the time of delivery to Buyer and for a period of twelve (12) months from the date of delivery (or such other period as may be agreed upon in writing by the parties, or as communicated in writing at sale by Philips), be free from defects in material or workmanship and shall substantially conform to Philips' specifications for such Product, or such other specifications as Philips has agreed to in writing, as applicable. Labor costs, (de)mounting and/or (de)installation are excluded from this warranty. Philips' sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at Philips' option, to (1) repair or (2) provide a replacement of the defective or non-conforming Product or (3) to an appropriate credit for the purchase price thereof. Philips will have a reasonable time to repair, replace or credit. Philips is entitled at its option to replace the defective or non-conforming Product(s) with a product that has minor deviations in design and/or specifications not affecting the functionality of the agreed Product(s). The non-conforming or defective Products shall become Philips' property as soon as they have been replaced or credited.
- (b) Buyer may ship Products returned under warranty to Philips' designated facility only in conformance with Philips' then-current return material authorization policy. Where a warranty claim is justified, Philips will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.
- (c) Notwithstanding the foregoing, Philips shall have no obligations under warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, use other than as set forth in the applicable user manual, neglect, improper installation or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.
- (d) Subject to the applicable mandatory law, the express warranty granted above shall extend directly to Buyer only and not to Buyer's customers, agents or representatives and is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, or non-infringement of intellectual property rights. All other warranties are hereby specifically disclaimed by Philips.
- (e) Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing

states the entire liability of Philips and its affiliates in connection with defective or non-conforming Products supplied hereunder.

8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- (a) Philips, at its sole expense, shall: (i) defend any legal proceeding brought by a third party against Buyer to the extent that the proceeding includes a claim that any Product as furnished by Philips under an Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold Buyer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.
- (b) Philips shall have no obligation or liability to Buyer under Section (a)
- (1) if Philips is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Buyer in such investigation, preparation, settlement and defense;
  - (2) if the claim is made after a period of three (3) years from the date of delivery of the Product.
  - (3) to the extent that any such claim arises from: (i) modification of the Product if the claim of infringement would have been avoided by use of the unmodified Product; or (ii) design, specifications or instructions furnished by Buyer;
  - (4) to the extent the claim is based directly or indirectly upon the quantity or value of products manufactured by means of the Product or upon the frequency of use or the amount of use of the Product irrespective of whether such claim alleges that the Product as such, or its use, infringes or contributes to the infringement of any intellectual property rights of the claimant;
  - (5) for unauthorized use or distribution of the Product or use beyond the specifications of the Product;
  - (6) to the extent any such claim arises from Buyer's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Product after Philips' notice to Buyer that Buyer should cease any such activity, provided such notice shall only be given if the Product is, or in Philips' opinion is likely to become, the subject of such a claim of infringement;
  - (7) for any costs or expenses incurred by Buyer without Philips' prior written consent;
  - (8) to the extent the claim is based on any prototypes, or Open Source Software, or software provided by Buyer or any of its designees to Philips and/or its affiliates;
  - (9) to the extent any such claim arises from any infringement or alleged infringement of third party's intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies,
  - (10) for infringement of any third party's intellectual property rights covering the manufacture, testing or application of any assembly, circuit, combination, method or process in which the Product may have been used, or
  - (11) for infringement of any third party's intellectual property rights with respect to which Philips or any of its affiliates has informed Buyer, or has published (in a datasheet or other specifications concerning the Product or elsewhere) a statement, that a separate license has to be obtained.

For such claims of infringements referred to in this Section 8(b), Buyer shall indemnify Philips and its affiliates against and hold them harmless from any damages or costs arising from or connected with such claims and shall reimburse all costs incurred by Philips and its affiliates in defending any claim, demand, suit or proceeding for such infringement, provided Philips gives Buyer prompt notice in writing of any such suit or proceeding for infringement.

- (c) If any Product is, or in Philips' opinion is likely to become, the subject of a claim of infringement as referred to under Section 8 (a) above or if Philips receives from a third party claiming infringement of third party IPR in relation to any of the Products, Philips shall have the right, without obligation or liability and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) provide replacement Product with a non-infringing product, or (iii) modify the Product in such a way as to make the modified Product non-infringing; or (iv) repurchase such Product from the Buyer for the initial price paid by Buyer less reasonable depreciation; or (v) suspend or discontinue supplies to Buyer of the Products or

parts to which such notice relates or (vi) terminate any Agreement to the extent related to such Product.

- (d) Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states Philips' entire liability and obligation to Buyer and Buyer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights or any other proprietary rights of any kind.

9. LIMITATION OF LIABILITY

- (a) PHILIPS SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY PHILIPS OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF PHILIPS HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

PHILIPS' AGGREGATE AND CUMULATIVE LIABILITY TOWARDS BUYER UNDER ANY AGREEMENT SHALL NOT EXCEED AN AMOUNT OF TEN PERCENT (10%) OF THE RELATED AGREEMENT.

- (b) Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.
- (c) The limitations and exclusions set forth above in this Section 9 shall apply only to the extent permitted by applicable mandatory law.

10. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by Philips and/or its affiliates is the confidential information of Philips and/or its affiliates. Buyer 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 transaction contemplated herein.

11. EXPORT/IMPORT CONTROLS

Buyer understands that certain transactions of Philips are subject to export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Philips to export, re-export or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, Philips may suspend its obligations and the Buyer's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, Philips may even terminate the relevant order in all cases without incurring any liability towards the Buyer or end-user.

Buyer warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Buyer. Buyer accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Buyer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Buyer shall indemnify Philips against any and all direct, indirect and punitive

damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Buyer's or its customers' breach or non-compliance with this article.

Buyer acknowledges that the obligations contained in this Agreement shall survive the termination of any agreement of other arrangement under which the products, software or technology was provided to Buyer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between Buyer and Philips, Buyer understands that the terms of this Agreement shall control and be binding upon Buyer.

#### 12. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Philips. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with Philips or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

#### 13. ANTI BRIBERY

Buyer agrees that it now and in future shall comply with national law on prevention of bribery, as well as any other law transforming from ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (including the US Foreign Corrupt Practices Act). In general, the law makes it illegal to bribe or make a corrupt payment to an Official for the purpose of obtaining or retaining business, directing business to any person, or securing any improper advantage.

Buyer's failure to comply with any provision of this section is grounds for immediate termination of any Agreement by Philips (or its respective affiliate(s)), without Philips' incurring any liability towards Buyer. In the event of such termination, (i) Philips shall be under no obligation to supply any Product to Buyer, (ii) Buyer shall be responsible for and indemnify Philips for any damages, claims, penalties or other losses (including attorneys' fees) that may be asserted against or incurred by Philips as a result of Buyer's breach of this section; and (iii) Philips shall be entitled to any other remedies available at law or in equity. The terms and conditions of this section shall survive any expiration or termination of this Agreement.

Philips will only do business with those companies that respect the law and adhere to ethical standards and principles. Should Philips receive any information to the contrary, Philips will inform and Buyer agrees to cooperate and provide whatever information is necessary to allow Philips to decide whether there is any basis to any allegation received and whether the Agreement should continue. Such information includes, but is not limited to, books, records, documents, or other files.

#### 14. GOVERNING LAW AND FORUM

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of Luxembourg. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and Philips to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the courts of Luxembourg (Luxembourg), provided that Philips shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any offer, confirmation or Agreement. Nothing in this Section 13 shall be construed or interpreted as a limitation on either Philips' or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

#### 15. BREACH AND TERMINATION

Without prejudice to any rights or remedies Philips may have under the Agreement or at law, Philips may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Buyer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or
- (c) the control or ownership of Buyer changes.

Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable. In the event of cancellation, termination or expiration of an Agreement, the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

16. MISCELLANEOUS

- (a) In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
- (b) The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.