



## GENERAL CONDITIONS OF SALE

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### 1. Offer, confirmation or agreement

These terms and conditions of commercial sale of ILTI LUCE S.r.l. (the “Terms and Conditions”) apply to and form an integral part of all quotations and offers made by ILTI LUCE S.r.l. (“ILTI ”), all acceptances, acknowledgements and confirmations by ILTI of any orders by Buyer and any agreements (“Agreements”) regarding the sale by ILTI and purchase by Buyer of goods and services (“Products”), unless and to the extent ILTI explicitly agrees otherwise. Any terms and conditions set forth on any document or documents issued by Buyer either before or after issuance of any document by ILTI setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by ILTI and any such terms shall be wholly inapplicable to any sale made by ILTI to Buyer and shall not be binding in any way on ILTI. ILTI ’s offers are open for acceptance within the period stated by ILTI in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by ILTI at any time prior to the receipt by ILTI of Buyer’s acceptance thereof.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) ILTI ’s manufacturing facility or other facility designated by ILTI , unless agreed otherwise in writing between Buyer and ILTI and do not

include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. ILTI will add taxes, duties and similar levies to the sales price where ILTI is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price, including without limitation, costs concerning the application of the WEEE Directive about waste of electric and electronic appliances, if applicable.

### **3. Payment**

- (a) Unless agreed otherwise between ILTI and Buyer in writing, ILTI 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 according to the terms included in the offer or the acceptance of the order issued by ILTI. All payments shall be made to the designated ILTI 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 ILTI. In addition to any other rights and remedies ILTI may have under applicable law, interest will accrue on all late payments, as per art. 5 of the Legislative Decree 231/2002, at a rate equal to the official ECB rate plus 7% or to the extent permitted by applicable law, from the due date until payment in full.
- (b) All deliveries of Products agreed to by ILTI shall at all times be subject to credit approval of ILTI . If, in ILTI 's judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, ILTI may require full or partial payment in advance or other payment terms as a condition to delivery, and ILTI may suspend, delay or cancel any credit, delivery or any other performance by ILTI .
- (c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, ILTI shall have the right to refuse performance and/or delivery of any Products until payments are brought current and ILTI may suspend, delay or cancel any credit, delivery or any other performance by ILTI . 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 ILTI, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by ILTI are approximate only and ILTI shall not be liable for, nor shall ILTI be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. ILTI 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 ILTI written notice of failure to deliver and thirty (30) days within which to cure. If ILTI 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 Agreement.
- (c) Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Buyer upon ILTI's delivery in accordance with the applicable INCOTERMS.
- (d) If Buyer fails to take delivery of Products ordered, then Buyer shall immediately notify it to ILTI and ILTI may deliver the Products in consignment at Buyer's cost.
- (e) In the event ILTI's production is curtailed for any reason, ILTI shall have the right to allocate its available production and Products 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.

### **5. Force majeure**

ILTI 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 or by 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 ILTI being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond ILTI's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which ILTI cannot reasonably be required to execute its obligations including force majeure and/or default by one of ILTI's 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 ILTI to extend for a period of three (3) consecutive months), ILTI 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 ILTI of a Product implies the non-exclusive and non-transferable limited license to Buyer under any of ILTI's and/or its affiliates' intellectual property rights ("ILTI's IPR") in the territory to use and resell Products as sold by ILTI to Buyer.

To the extent that software and/or documentation is embedded in or delivered with a Product, the sale of such Product 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 ILTI intellectual property rights to use such software and/or documentation in conjunction with and as embedded in or delivered with the Products as supplied by ILTI in the territory.

Buyer shall not: (a) modify, adapt, alter, translate, or create derivative works from any software residing in or provided by ILTI in conjunction with any Products; (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 ILTI except as explicitly allowed under applicable law. Buyer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of ILTI and/or its affiliates or its third party suppliers in any software or documentation provided by ILTI. License terms of third parties may apply.

## 7. Limited warranty and disclaimer

- (a) ILTI warrants that under normal use in accordance with the applicable user manual the Products, (excluding any software that is not embedded in a Product by ILTI shall, at the time of delivery to Buyer and for a period of **thirty-six (36) months** from the date on the waybill (or such other period as may be agreed upon in writing by the parties), be free from defects in material or workmanship and shall substantially conform to ILTI's specifications for such Product, or such other specifications as ILTI has agreed to in writing, as applicable. ILTI's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at ILTI's option, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. ILTI will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become ILTI's property as soon as they have been replaced or credited.
- (b) Buyer may ship Products returned under warranty to ILTI's designated facility only in conformance with ILTI's then-current return material authorization policy. 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, ILTI 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 user manual, neglect, improper installation or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.
- (d) The express warranty granted above shall extend directly to Buyer 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. With the only exception of willful misconduct and gross negligence, all other warranties are hereby specifically disclaimed by ILTI.
- (e) Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states the entire liability of ILTI in connection with defective or non-conforming Products supplied hereunder.

## **8. Intellectual property rights indemnity**

- (a) ILTI, 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 ILTI 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) With the only exception of willful misconduct and gross negligence, ILTI shall have no obligation or liability to Buyer under Section (a) (1) if ILTI 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.
- (c) If any Product is, or in ILTI's opinion is likely to become, the subject of a claim of infringement as referred to under Section 8 (a) above, ILTI shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) provide replacement Product, or (iii) modify the Product in such a way as to make the modified Product non-infringing; or (iv) 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 ILTI's 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 on liability**

- (a) WITH THE ONLY EXCEPTION OF WILFUL MISCONDUCT OR GROSS NEGLIGENCE, ILTI 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 ILTI OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF ILTI HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.  
ILTI'S 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 ILTI and/or its affiliates is the confidential information of ILTI 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 ILTI are subject to export control laws and regulations, such as 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 ILTI 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, ILTI 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, ILTI 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 ILTI against any and all direct, indirect and punitive damages, loss, costs (including attorneys fees and costs) and other liability arising from claims resulting from Buyer's or its customers' breach or non-compliance with this Section. Buyer acknowledges that the obligations contained in the 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 the Agreement with any other document entered into between Buyer and ILTI, Buyer understands that the terms of the 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 ILTI. 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 ILTI 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. Governing law and forum**

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of Italy. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and ILTI 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 Milan, Italy, provided that ILTI 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 ILTI' 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.

## **14. Breach and termination**

Without prejudice to any rights or remedies ILTI may have under the Agreement or at law, ILTI may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof, in accordance with the provisions of art. 1456 of the Italian Civil Code, without any liability whatsoever and without excluding the possibility of asking for damages to Buyer, in the following cases:

(a) Buyer violates or breaches:

- i) obligations concerning payment as per art. 3;
- ii) obligations concerning rights in software, documentation and intellectual property as per art. 6;
- iii) obligations concerning confidentiality as per art. 10;

(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.

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.

## **15. 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.

**16. Information concerning treatment of personal data, according to Legislative Decree Legislative 30 June 2003, n. 196 (Code of protection of the personal data)**

1. In the execution of the performances object of the present agreement the ILTI undertakes to treat the personal data in compliance with Legislative Decree 30 June 2003, n. 196 (Code of protection of the personal data).
2. In details, the collected data are those identified by ILTI, as well as other information i.e. domiciliation, bank current accounts and trade information, collected by the interested, or via public registers, lists, acts or documents knowable from anyone. The collection of the aforesaid data is necessary in order to accomplish the execution of the contract.
3. The above mentioned data will be collected, recorded, reordered and managed from the ILTI by means of every necessary operation, also electronically in order to exercise the rights arising out of the Agreement or to accomplish to the relevant duties. The treatment of the data shall be done via suitable instruments to guarantee safety and confidentiality of data to be treated.
4. The personal data could be communicate to people in charge of carrying out proceeds and payments, to bank institutes, to cessionary creditors, to the Public Authorities or Administrations in execution of law order, to the affiliated companies also abroad, to the marketing net and technical assistance, to advisers, lawyers and technicians, as well as IT companies for electronic processors.
5. ILTI undertakes to adopt all organizational, physical and logical measures suitable to guarantee, according to their knowledge and to the technical progress for the time being, the maximum reduction of the destruction risks or accidental loss also, non-authorized access, treatment not concurred or not in compliance with the purposes of the collection of the data. ILTI undertakes, moreover, to respect the minimal measures of safety according to Head II of the Code of protection of personal data.
6. In relation to the foretold treatments Buyer will have the possibility to exercise the rights pursuant to art. 7 of the Legislative Decree 196/2003 as follows:
  - a) to obtain confirmation of the existence or of its data;
  - b) to obtain the communication in intelligible shape of the data and their origin, as well as the purpose on which the treatment is based;
  - c) to obtain the cancellation, the transformation in anonymous shape or the block of the data obtained not in compliance with the law as well as the up-dating, the correction, or amendment of the data;
  - d) to oppose, for justified reasons, to the treatment of the data, in whole or in part.
7. To exercise such rights each Party shall address to person detailed below:  
ILTI LUCE S.r.l. at Philips s.p.a. ,Via Casati 23, 20052 MONZA – Italy - f.a.o. Privacy Officer at Legal Department, fax +039 0392036713.
8. Buyer acknowledges that the treatment of personal data include transfer abroad, also in non EU countries and gives hereby its consent.

In accordance to the provisions set forth in art. 1341, Il co. Buyer hereby expressly acknowledges and accepts the following clauses:

- 3 b) and c) Suspension of performance by ILTI;
- 4 e) Delivery and Quantity;
- 5) Force Majeure;
- 6) Rights in software, documentation and intellectual property;
- 7) Limited Warranty and Disclaimer;
- 8) Intellectual Property Rights;
- 9) Limitation of Liability;
- 11) Export/Import controls;

- 12) Assignment and set off;
- 13) Governing Law and Forum.

We accept the return of the goods only with our "return authorization number" and with the manner specified by us.

The goods remain our property until they are paid in full.

Bulbs are not included unless specifically mentioned on the price list.

ILTI LUCE reserves the right to cancel at any time and without notice, any product from the collection, and, without prejudice to the essential features of the models described, to make price changes, modification of parts, or finishes as it deems convenient of improvement or for reasons of manufacturing or commercial nature.

Delivery terms are indicative and not binding.

Products are guaranteed for 3 years from the date of purchase (waybill)