

**PHILIPS SEMICONDUCTORS TERMS AND CONDITIONS OF COMMERCIAL SALE  
VERSION 2003**

**1. OFFER, QUOTATION, ACKNOWLEDGEMENT OR CONFIRMATION**

These terms and conditions of commercial sale (the "Terms and Conditions") apply to and form an integral part of:

- (a) all quotations and offers (hereinafter both referred to as "Offer") of Philips Semiconductors of Philips Electronic Building Elements Industries (Taiwan) Ltd. ("Philips") to Buyer,
- (b) all acceptances, acknowledgements or confirmations by Philips (hereinafter all referred to as "Confirmation") of any order of Buyer, including without limitation orders of Buyer resulting from any pricing- or other framework agreement between any Buyer and Philips, unless explicitly agreed otherwise in writing between Philips and Buyer,
- (c) any agreement resulting from such Offer or Confirmation and
- (d) any agreement incorporating these Terms and Condition by reference (both types of agreements referred to under (c) and (d) shall hereinafter be referred to as an "Agreement")

regarding the sale by Philips and purchase by Buyer of goods ("Products"), unless Philips explicitly agrees in writing to the exclusion hereof.

These Terms and Conditions shall constitute all of the terms and conditions of any Offer, Confirmation and Agreement between Philips and Buyer relating to the sale by Philips and purchase by Buyer of Products. Any specifications and any terms and conditions set forth on any document or documents issued by Buyer (including "Pull Documents" as defined below) 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 document shall be wholly inapplicable to any sale made by Philips and shall not be binding in any way on Philips. No Offer, Confirmation or Agreement constitutes an acceptance by Philips of any other terms and conditions and Philips does not intend to enter into an Agreement other than under these Terms and Conditions.

Any Offer is expressly made conditional on Buyer's assent to all of the terms contained in the Offer without deviation. Acceptance by Buyer of an Offer may be evidenced by (i) Buyer's written or verbal assent or the written or verbal assent of any representative of Buyer, (ii) Buyer's acceptance of delivery of the Products or payment of the first installment of the Products (if applicable), or acceptance by any representative of Buyer, or (iii) other conduct by Buyer or any representative of Buyer consistent with acceptance of the Offer.

In the event that any Offer or Confirmation is sent in response to Buyer's blanket purchase order, the terms and conditions of that Offer or Confirmation, including these Terms and Conditions, shall apply to any "pull" by Buyer or delivery by Philips, irrespective of whether Buyer submits additional purchase orders (electronically or otherwise) ("Pull Documents") and whether Philips provides a Confirmation to such additional purchase orders. All terms and conditions of such Pull Documents are hereby rejected.

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 the Buyer's acceptance related thereto.

If Philips receives an order from Buyer for the sale by Philips and purchase by Buyer of Products and such order is not a response to an Offer by Philips, or if Philips receives an order or acceptance by Buyer which deviates from Philips' Offer, such order or acceptance, respectively, shall be deemed to be a request for an Offer only.

An acceptance by Buyer of any Offer made by an order gatherer, liaison officer, agent or sales representative of Philips shall first constitute an Agreement between Philips and Buyer upon explicit Confirmation by Philips itself.

**2. PRODUCTS, QUANTITIES AND PRICING**

Buyer shall purchase the Products in the quantities and at the prices specified in Philips' Offer or, as the case may be, Confirmation or Agreement. Prices in any Offer, Confirmation or Agreement are in euros, based on delivery Ex-Works (Incoterms 2000) 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. Taxes, duties and similar levies will be added by Philips to the sales price where Philips is required by law to pay or collect them and will be paid by Buyer together with the price. With regard to Custom Products (as defined under Article 6 below) Philips may deliver a quantity which is a maximum amount of ten percent (10%) more or less than the ordered quantity of any order line item. Such delivered quantity will be accepted and paid for – against an amount being the actual delivered quantity times the unit price - in full satisfaction of each party's obligation under the Agreement for the quantity ordered.

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

All intellectual property rights covering Products including without limitation any and all software and/or documentation or data included in, with or comprising Products, and all ownership rights in and to such intellectual property rights, software, documentation and data, shall remain solely and exclusively with Philips or its third party suppliers, whether or not it was developed specifically for the Buyer.

No rights or licenses are granted, or implied by estoppel or otherwise, under any intellectual property rights of Philips and/or its Affiliates or any intellectual property residing in the Products, including without limitation, software and/or documentation or any data furnished by Philips, except for the license under any of Philips' and/or its Affiliates' intellectual property rights to use and resell Products sold by Philips to Buyer subject to the provisions set forth herein. The term "Affiliate" shall mean any entity or other person which, directly or indirectly, controls, is controlled by or is under common control with Philips.

Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as:

- a) Conferring any license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party acquiring any item(s) such as, but not limited to, Product(s), including without limitation, software and/or documentation or any data furnished by Philips, for the combination of such acquired item(s) with one or more other items (including items acquired from Buyer) even if such items have no substantial use other than as part of such combination.
- b) Conferring any license or right with respect to any trademark, trade or brand name, a corporate name of Philips and/or its Affiliate(s), or any other name or mark, or contraction abbreviation or simulation thereof.
- c) Imposing on Philips and/or its Affiliate(s) any obligation to furnish any manufacturing or technical information except as expressly required under these Terms and Conditions.
- d) Conferring any license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any intellectual property rights of Philips and/or its Affiliates covering a standard set by a standard setting body and/or agreed to between at least two companies.
- e) Conferring any license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any intellectual property rights of Philips and/or its Affiliates if Philips and/or its Affiliates has informed Buyer or has published (in a datasheet concerning the Product or elsewhere) a statement that a separate license has to be obtained and/or that no implied license is granted. The absence of such a statement in a given version of the datasheet is of no consequence whatsoever if a subsequent version of the datasheet does contain such a statement.

To the extent that Buyer is authorized to reproduce and distribute such software and documentation, such reproduction and distribution may be made either in electronic or hardcopy format, solely as required for use with Buyer's Product. Buyer shall not copy, reproduce or distribute software and/or documentation except as specifically provided herein or pursuant to a separate, written license duly executed by Philips and/or any of its Affiliates. Unless otherwise specifically provided in writing and signed by Philips, Buyer shall not have the right to any software source code. Any and all source code included as part of the software and any compilation or derivative thereof is the proprietary information of Koninklijke Philips Electronics N.V. and is confidential in nature. Buyer

shall not: (a) modify, adapt, alter, translate, or create derivative works from, the software; (b) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available the software; (c) merge or incorporate the software with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for the software without written authorization from Philips. 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.

Buyer's rights under the Agreement are conditioned upon Buyer not performing any actions in a manner that would require any software furnished with the Product, the Product or any derivative work thereof to be licensed as Publicly Available Software, including without limitation:

- (i) incorporate Identified Software into such software, the Product or any derivative work thereof;
- (ii) combine Identified Software with such software, the Product or any derivative work thereof;
- (iii) distribute Identified Software in conjunction with such software, the Product or derivative work thereof; or
- (iv) use Identified Software in the development of a derivative work of such software or the Product.

As used herein, (i) Identified Software includes, without limitation, Publicly Available Software and means software which is licensed pursuant to terms that (1) create, or purport to create, obligations for Philips, its Affiliates or its suppliers with respect to any software furnished with the Product, the Products or a derivative work thereof, or (2) grant, or purport to grant, to any third party any rights or immunities under Philips', its Affiliates' or its suppliers' intellectual property or proprietary rights in such software, the Product or a derivative work thereof and (ii) Publicly Available Software means any software that requires as a condition of use, modification and/or distribution of such software that other software incorporated into, derived from or distributed with such software be (1) disclosed or distributed in source code form; (2) be licensed for the purpose of making derivative works; or (3) be redistributable at no charge.

Buyer shall indemnify Philips and its Affiliates against and hold Philips and its Affiliates harmless from any damage or costs arising from or in connection with any violation or breach of the provisions of this Article 3 and Buyer shall reimburse all costs and expenses incurred by Philips and/or its Affiliates in defending any claim, demand, suit or proceeding arising from or in connection with such violation or breach.

#### 4. PAYMENT

- (a) Net payment is due within thirty (30) days of date of invoice unless otherwise agreed between Philips and Buyer in writing. All payments shall be made to the designated Philips' address. If deliveries are made in installments, each installment shall be separately invoiced and paid for when due. No discount is allowed for early payment unless agreed to in writing by Philips. Interest will accrue on all late payments, at the rate of 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 shipments, deliveries and performance of work agreed to by Philips shall at all times be subject to the credit approval of Philips. If, in Philips' judgment, the Buyer's financial condition at any time does not justify production or delivery on the above payment terms, Philips may alter the terms of payments, such as require full or partial payment in advance or other payment terms as condition for delivery, and Philips may suspend, delay or cancel any credit, delivery or any other performance by Philips.
- (c) Payment by Buyer of non-recurring charges, as may be made to Philips for special design, engineering or production materials required for Philips' performance on orders deviating from Philips' established product line, shall not convey title to either the design or special materials, but title shall remain in Philips.
- (d) Buyer shall not offset, withhold or reduce any payment(s) due by it to Philips. The payment of fees and charges is a covenant of Buyer that is independent of the other covenants made by the parties hereunder.
- (e) If Philips incurs exchange rate losses due to Buyer's failure to pay when payments are due, Philips shall be entitled to equivalent compensation from Buyer for such losses.

- (f) 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 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 or in equity for Buyer's default.

#### 5. DELIVERY AND QUANTITIES

- (a) Products shall be delivered EXWORKS (Incoterms 2000) Philips' manufacturing facility, or other facility as designated by Philips, unless otherwise agreed in writing between Philips and Buyer. 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 because of any delivery made within a reasonable time before or after the stated delivery date. Philips agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that the Buyer provides all necessary order and delivery information sufficiently prior to the agreed delivery date.
- (b) In the event the Buyer contests delivery, the Buyer must request a proof of delivery from Philips within ninety (90) days of the date of Philips' invoice, otherwise delivery shall be deemed completed.
- (c) Buyer will give Philips written notice of failure to deliver and thirty (30) days within which to cure. If Philips does not cure within thirty (30) days, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Agreement.
- (d) Title in the Products shall pass to Buyer upon payment of the purchase price in respect thereof in full. Risk of loss in the Products shall pass to Buyer upon Philips' delivery in accordance with the applicable Incoterm.
- (e) If Buyer fails to take delivery, then Philips may deliver the Products in consignment at Buyer's costs and expenses.
- (f) In the event of shortages Philips may allocate Products among its customers.

#### 6. CUSTOM PRODUCT

Philips shall have exclusive rights to goods designed and manufactured for the unique needs of Buyer, to Buyer's specifications or requirements, such as an ASIC or ASSP or to military specifications ("Custom Product"). Philips shall retain title to and possession of designs, masks and database tapes. Individual segments or parts of Custom Product designs, including but not limited to standard cells, megacells, or base arrays, are the property of Philips and may be used by Philips in other designs and may not be used by Buyer except as a part of Custom Product designed and manufactured by Philips. Prices and/or schedules are subject to increase by Philips if any specifications are revised or supplemented or there are unforeseen difficulties with the design.

#### 7. RESCHEDULING AND CANCELLATION

No order, Agreement or any part thereof may be rescheduled or cancelled without Philips' prior written consent.

#### 8. NON ATTRIBUTABLE FAILURES

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

- (i) such failure results from the fact that Philips' manufacturing volume of the Products concerned is lower than anticipated due to interruptions in the manufacturing process; or
- (ii) such failure does not result from its fault; or
- (iii) such failure is caused by Force Majeure as defined below or by law.

In case of such a non-attributable failure, the performance of the relevant part(s) of the Agreement will be suspended for the period such non-attributable 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 Offer or Confirmation - in consequence of which Philips cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labour, materials or components. In the event that the Force Majeure extends for a period of five consecutive months (or in the event that the delay is reasonably expected by Philips to extend for a period of five consecutive months), Philips shall be entitled to cancel all or any part of the Agreement without any liability of Philips towards Buyer. In the event Philips' production is curtailed, for any reason, Philips shall have the right to allocate its available production, in its sole discretion, among its various customers.

#### 9. LIMITED WARRANTY AND DISCLAIMER

- (a) Philips warrants that under normal use the Products, excluding any software, prototypes, risk production units (as defined in this Article 9 (a) below), experimental Products, beta testing Products and samples of newly developed Products, 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), 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. All Custom Products manufactured and/or delivered prior to both parties written acceptance of the prototypes thereof ("risk production units"), all software, prototypes, experimental Products, beta testing Products and samples of newly developed Products, shall be AS IS WITHOUT WARRANTY OF ANY KIND. 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, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. Philips will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become Philips' property as soon as they have been replaced or credited for.
- (b) Buyer may ship Products returned under warranty claims to Philips' designated facility only so long as the returns are in conformance with Philips' then-current Return Material Authorization policy and are accompanied by a statement of the reason for the return on a Return Material Authorization form issued by Philips. Where warranty adjustment is made, Philips will pay for freight expenses. Buyer shall pay for returned Products that are not defective or non-conforming together with the freight, testing and handling costs associated therewith.
- (c) Notwithstanding the foregoing, Philips shall have no obligations for breach of warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, 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. Except for warranty of title, the express warranty granted above 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 Article 11, the foregoing states the entire liability of Philips in connection with defective or non-conforming Products supplied hereunder.

#### 10. 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 (excluding software) furnished by Philips under the 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 settlement and defense; (2) 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; (ii) design, specifications or instructions furnished by Buyer; or (iii) the combination of the Product with any other product, service or technology; or (iv) the use of the Product or any part thereof in the practise of a process; (3) 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 the Product as such, or its use, infringes or contributes to the infringement of any intellectual property rights of the claimant ; (4) for unauthorized use or distribution of the Product or use beyond the specifications of the Product; (5) 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; or (6) for any costs or expenses incurred by Buyer without Philips' prior written consent; or (7) to the extent the claim is based on any prototypes, risk production units, or software; (8) to the extent any such claim arises from any infringement or alleged infringement of any patent, copyright, trademark, or trade secret or other intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies, (9) 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 (10) for infringement of any third party's intellectual property rights with respect to which Philips has informed Buyer or has published (in a datasheet concerning the Product or elsewhere) a statement that a separate license has to be obtained and/or that no implied license is granted. Buyer shall indemnify Philips against and hold Philips harmless from any damages or costs arising from or connected with such claims of infringements and shall reimburse all costs incurred by Philips 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 clause 10 (a) above, Philips 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) replace or modify the Product in such a way as to make the modified Product non-infringing; or (iii) terminate any Agreement to the extent related to such Product. In the event of any such termination, Philips shall repurchase all Products in Buyer's possession at the time of such termination, which are then subject to the claimant's continuing claim of infringement. The repurchase price shall be subject to reasonable depreciation.
- (d) Subject to Article 11, the foregoing states Philips' entire liability and obligation to Buyer or its mediate or immediate customers and Buyer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights of any kind.

## 11. LIMITATION OF LIABILITY

- (a) Except for Buyer's liability under Article 3 hereof, no party shall be liable to the other for any indirect, incidental, punitive, special or consequential damages (including lost profits or lost savings) whether or not such damages are based on tort, warranty, contract or any other legal theory – even if such party has been advised, or is aware, of the possibility of such damages. In no event shall Philips be liable for excess

procurement costs and rework charges.

- (b) Philips' aggregate liability towards Buyer under any Agreement shall not exceed (1) the lesser of (a) the amount actually received by Philips in the twelve (12) months immediately preceding the event giving rise to any liability for the Products causing any liability and (b) five (5) million Euros, but (2) in case of liability for delay or non-delivery of Products, the purchase price under the relevant Agreement of the delayed or not delivered Products concerned.
- (c) Philips' Products are not designed for use in life support equipment or other application where malfunction of a Philips' product can reasonably be expected to result in a personal injury. Philips' customers using or selling Philips' Products for such use do so at their own risk and agree to fully indemnify Philips for any damages resulting from such use or sale.
- (d) Any 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.
- (e) The limitations set forth above in this Section 11 shall only apply to the extent permitted by applicable law and shall not apply to the extent Buyer's damage is caused by Philips' gross negligence or willful misconduct.

#### 12. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by Philips 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.

#### 13. COMPLIANCE WITH LAWS

Each party hereto represents that it is duly authorized to enter into the Agreement and represents that with respect to its performance hereunder, it will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products or services under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Philips may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Philips may even terminate the Agreement, without incurring any liability towards Buyer. Furthermore, if an end-user statement is required, Philips shall inform Buyer immediately thereof and Buyer shall provide Philips with such document upon Philips' first written request; if an import license is required, Buyer shall inform Philips immediately thereof and Buyer shall provide Philips with such document as soon as it is available. By accepting Philips' Offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

#### 14. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Philips. Buyer hereby waives any and all rights to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer and Philips may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

#### 15. GOVERNING LAW AND FORUM

All Offers, Confirmations and Agreements are governed by and construed in accordance with the laws of [Taiwan, the Republic of China](#). For determination of any and all disputes arising out or in connection with such Offer, Confirmation or Agreement, Buyer submits, for the exclusive benefit of Philips, to the jurisdiction of the competent court(s) of [Taipei, Taiwan, the Republic of China](#). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Offer, Confirmation or Agreement.

16. LIABILITY FOR INJURY OR LOSS

The Buyer shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents, or subcontractors of the Buyer at Philips' premises, and the Buyer shall indemnify and hold harmless Philips from and against all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of such agents, employees, or subcontractors of the Buyer; and Buyer shall maintain such insurance as will protect Philips against the aforementioned risks and against any claims under applicable law.

17. 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:

- (i) Buyer fails to make payment for any Products to Philips when due;
- (ii) Buyer fails to accept conforming Products supplied hereunder;
- (iii) a voluntary or involuntary petition in bankruptcy or winding up is filed against Buyer, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against Buyer, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or
- (iv) Buyer violates or breaches any of the provisions of these Terms and Conditions.

Upon occurrence of any of the events referred to above under (i) through (iv), 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 any Agreement the terms and conditions destined to survive such cancellation, termination or expiration, which shall include without limitation Articles 8, 9, 10, 11 and 12, shall survive.

18. PRODUCT AND PRODUCTION CHANGES

Philips reserves the right to make at any time Product and/or production changes. In such event Philips represents that said changes shall not negatively affect form, fit or function of the Products and their performance characteristics.

19. DISCONTINUATION OF PRODUCT

Philips reserves the right to discontinue manufacturing and sale of Products at any time. If however at any time during the term of an Agreement under which Philips sells and Buyer purchases on a regular basis Products, such regularly sold and purchased Products are to be permanently discontinued ("Discontinued Product"), Philips shall use its reasonable commercial efforts to give Buyer prior written notice of such discontinuance and shall use reasonable commercial efforts to accept orders for such Discontinued Product all in accordance with Philips' product discontinuation process and general information related thereto as published on Philips' website.

20. SEVERABILITY

In the event that any provision(s) of the Agreement or 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 hereof.

21. WAIVER

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from any

Offer, Confirmation or Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement or by any related document or by law.

22. NOTICES

All notices or communications to be given under this Agreement shall be in writing and shall be deemed delivered upon hand delivery, confirmed facsimile communication, or three (3) days after deposit in the mail of the home country of the party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the parties at their addresses set forth on the Offer, Confirmations and/or Agreements.

23. ATTORNEYS' FEES

Should a dispute arise from the subject matter of any Offer, Confirmation or Agreement, the prevailing party in any resulting litigation shall be reimbursed by the other party for any and all reasonable attorneys' fees and expenses incurred.

24. RELATIONSHIP OF PARTIES

The Parties hereto intend to establish a relationship of buyer and seller and as such are independent contractors with neither party having authority as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.

25. MODIFICATIONS AND CHANGES

Philips reserves the right to make any amendments, modifications or changes to these Terms and Conditions at any time. Such amendments, modifications and changes shall have effect (1) to all Offer, Confirmations and Agreements referring to such amended, modified or changed Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (2) to any existing Agreement thirty (30) days from notification of such amendment, modification or changes by Philips to Buyer, unless Buyer has notified Philips within such 30 days period that it objects thereto.