

**General Terms and Conditions for the performance of Services**  
**by Philips Electronics Nederland B.V. acting through Philips Applied Technologies**  
**("General Terms and Conditions")**  
**Version June 2009**

## **1. Quotation, confirmation and Agreement**

- 1.1 These General Terms and Conditions apply to and form an integral part of all Offers to Customer, all orders of Customer to Philips, all Confirmations by Philips, and any Agreement, all as relating to the performance of Services by Philips to Customer.
- 1.2 These General Terms and Conditions are not applicable to the secondment of employees by Philips to Customer or any other third parties.
- 1.3 These General Terms and Conditions shall constitute all of the terms and conditions of any Offer, Confirmation and Agreement between Philips and Customer relating to the performance of Services by Philips to Customer. Any terms and conditions stated orally by Customer or set forth in any document issued by Customer either before or after issuance of any document by Philips setting forth or referring to these General Terms and Conditions are hereby explicitly rejected and disregarded by Philips, and any such terms and conditions shall be wholly inapplicable to any performance of Services by Philips and shall not be binding in any way on Philips, unless and to the extent expressly agreed to in writing by Philips.
- 1.4 Acceptance of any Offer is expressly conditional on Customer's acceptance of all of the terms contained in the Offer without deviation. Acceptance by Customer of an Offer may be evidenced by Customer's, or its representative's, written or verbal assent or Customer's or its representative's acceptance of the Services or payment of the (first installment of) of the price for the Services.
- 1.5 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in the Offer or, when no period is stated, within thirty (30) days from the date of the Offer, but any Offer may be withdrawn or revoked by Philips at any time prior to the receipt by Philips of Customer's acceptance related thereto.
- 1.6 If Philips receives any order from Customer for the performance of Services and such order is not in response to an Offer by Philips, or if Philips receives an order or acceptance by Customer which deviates from Philips' Offer, such order or acceptance, respectively, such order of Customer will only be binding after Philips written Confirmation which may be given by post, fax or e-mail.
- 1.7 Changes to the Offer or Agreement, including but not limited to the scope of the Services, whether prior or during the performance of the Services, require prior written approval from Philips.

## **2. Prices, Invoicing and Payment**

- 2.1 All prices in any Agreement (a) are in Euros or in the currency set forth in any Agreement, (b) do not include any applicable Taxes now or hereafter enacted and (c) are based on delivery "Ex-works" (Incoterms 2000). Philips will add Taxes to the price where Philips is required by law to pay or collect them and will be paid by Customer together with the price.
- 2.2 Prices apply to the Services offered or agreed to. Customer will pay Philips the fee or price, as specified in the Agreement, plus (i) all expenses such as but not limited to costs of traveling, board and lodging as incurred by Philips or its employees or agents, and (ii) all specific additional costs and expenses, such as but not limited to costs of thirds, reporting support, books, more than five copies of the final reports, all as in the Agreement or hereafter agreed in writing.
- 2.3 With respect to the Services, Philips will invoice Customer (a) for the hours spent at the prior agreed upon hourly rate (subject to revision at least once a year) or the agreed fixed fee, as specified in the Agreement, as well as (b) for materials and related expenses.
- 2.4 Invoices shall be submitted in accordance with the Agreement or, if not specified, not more often than monthly.

- 2.5 Customer will pay all invoices in accordance with the Agreement or, if not specified, within thirty (30) days after the invoice date. 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.
- 2.6 If Customer does not pay the amount due within the stipulated term, Customer will be automatically, without Philips notification being required, in default, and will owe interest over the outstanding balance payable on a monthly basis from the due date until payment in full at the official rate of interest set by the Dutch government from time to time. Furthermore, Customer agrees to pay any costs, fees and expenses incurred by Philips in connection with the collection of the debt together with the applicable interest.
- 2.7 The performance of the Services agreed to by Philips shall at all times be subject to credit approval of Philips. If, in Philips' judgment, Customer's financial condition at any time does not justify performance of the Services on the above payment terms, Philips may require full or partial payment in advance or other payment terms as condition for performance, and Philips may suspend, delay or cancel any credit, supply or any other performance by Philips.
- 2.8 In the event of any default by Customer in the payment of any fees, prices or costs due, or any other default by Customer, Philips is entitled to refuse the performance of the Services immediately and Philips may suspend, delay or cancel any credit, performance of the Services by Philips, until such payments are brought current or such other defaults are remedied. 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.
- 2.9 Customer shall not withhold or reduce any payment due by Customer to Philips. Customer hereby waives any and all rights to offset existing and future claims against any payment due under the Agreement or under any other agreement with Philips and agrees to pay the amounts under the Agreement regardless of any claimed offset which may be asserted by Customer or on its behalf. The payment of fees, prices and costs is a covenant of Customer that is independent of the other covenants made by the Parties under the Agreement.

## **3. Title and Retention of Title**

- 3.1 Payment by Customer of non-recurring costs as may be engaged by Philips for the creation or development of Work Products for the performance of the Services shall not convey title to the Work Products nor to the design thereof, which title shall remain always with Philips.
- 3.2 Except for Philips Intellectual Property and Work Products, which shall remain Philips and/or its Affiliates property at all times, Customer explicitly accepts that Philips shall retain title to the Deliverables until full payment has been received by Philips of all amounts due in accordance with the Agreement between Customer and Philips under which the Deliverables are delivered to Customer and Customer agrees not to resell the Deliverables and shall take all measures to protect the Deliverables and to ensure that Philips title to the Deliverables is in no way prejudiced. Risk of damage, loss or destruction of the Deliverables shall pass to Customer upon the delivery of the Deliverables to Customer in accordance with the Ex-works delivery condition. Customer shall insure the Deliverables at its own expense for the time they remain Philips property. If Customer fails to make any payments to Philips when due, Customer shall, upon Philips first notice, return to Philips, at Customer's risk and expense, any Deliverables to which Philips has retained title as aforesaid.

#### 4. Delivery and Acceptance

- 4.1. Delivery Dates are approximate only and Philips shall not be liable for, nor shall Philips be in breach of its obligations to Customer because of any delivery made within a reasonable time before or after the Delivery Date. Subject to clause 5.3, Philips shall use its Efforts to meet the Delivery Dates communicated or acknowledged by Philips on the condition that Customer meets all obligations under clause 5.2 and provides all necessary order and delivery information sufficiently prior to the requested Delivery Date. If Philips fails to use its Efforts and as a result thereof Philips fails to meet the Delivery Date, Customer shall give Philips written notice thereof and a reasonable period of time, with a minimum of thirty (30) days, within which Philips shall use such Efforts to meet the new Delivery Date. If in spite of Philips using its Efforts, the new Delivery Date is not met, Customer may nevertheless terminate the Agreement, subject to Clause 12.1. With respect to the breach of its delivery obligations, the foregoing states Customer's sole and exclusive remedy and, provided Philips complies with this clause, Philips shall not be bound by any further obligation nor be liable for any damage. No order, Agreement or any part thereof may be rescheduled or cancelled without Philips' prior written consent.
- 4.2. In case any specific acceptance procedure has been agreed for the Deliverables, Customer agrees to execute such acceptance procedure with respect to such relevant Deliverables within the period agreed or, if not specified, within a period of thirty (30) days after delivery thereof. Such Deliverables will be deemed accepted on the date of delivery unless rejected in writing within said period. Should acceptance be rejected for nonconformity of the Deliverables with the agreed acceptance criteria, Philips shall use its Efforts to correct the part of the Services not conforming to the acceptance criteria, within a reasonable period of time to be agreed with Customer, with a minimum of thirty (30) days. The obligations of Philips described above are Philips' only obligations and Customer's sole and exclusive remedy for non-conformities of the Deliverables to the acceptance criteria.

#### 5. Co-operation and responsibility of Customer

- 5.1 The Agreement and the description of the Services are based on information provided by Customer.
- 5.2 Customer shall:
- (a) make available to Philips all items - such as but not limited to documents, tools, test beds and information data - necessary for Philips to perform the Services, free of charge in a timely and appropriate fashion; and
  - (b) make available such reliable, adequately trained, experienced and skilled employees of its organization, in sufficient number and within the timetable set forth in the Agreement, as are necessary to assist Philips in fulfilling its obligations under the Agreement and who shall perform their undertakings at Philips facilities at Customer's own risk and expense; and
  - (c) identify all healthcare and other regulatory and quality requirements applicable to the Services and specify them expressly to Philips as part of the Specifications, and obtain if required by law or otherwise, all necessary approvals of the relevant governmental or regulatory bodies in connection with the performance and the use of the Services; and
  - (d) if so requested by Philips, make available to Philips, free of charge, in good time and, if applicable, in the required numbers (i) sufficient office space, including but not limited to telephone, facsimile and e-mail connection(s), (ii) manufacturing capacity and (iii) Customer Supplies that may be necessary for the performance of the Services or for the performance of tests at such Customer locations as may be necessary to facilitate such performance; and
  - (e) insure Customer Supplies against risks of loss and damage to the health of Philips personnel and/or of Philips property, and retain all such risks; and
  - (f) if applicable, provide, free of charge, Philips personnel with adequate safety and other training and familiarize them with local procedures and house rules of Customer.
- 5.3 In case any or all of the conditions under clause 5.2 are not, not properly or not timely complied with, or if Philips has to suspend the performance of the Services for reasons not attributable to Philips gross negligence or willful misconduct, the Delivery Date set forth in the Agreement shall be automatically extended for such additional

time as shall be necessary to perform the Services and any and all additional costs resulting thereof shall be for Customer's account.

- 5.4 Philips will administer and care for the Customer Supplies with the same level of care as applied to Philips own similar property. Return shipments of Customer Supplies to Customer, if any, will be made under the same delivery conditions as for the supply of the Deliverables.

#### 6. Limited warranty and disclaimer

- 6.1 With respect to the Services other than supply of Hardware Deliverables, Software Deliverables or Work Products, Philips solely warrants that it will use its Efforts to perform such Services; however, Customer acknowledges that the results of such Services to be performed are experimental in nature and therefore uncertain and cannot be warranted by Philips. In case Philips does not comply with the warranty set forth above, and as a result thereof the Services have not been properly performed, Customer shall give written notice thereof and a reasonable timeframe with a minimum of thirty (30) days within which Philips shall take the necessary actions to achieve such Efforts to perform the part of the Services affected by the breach of the above warranty, without charging for the costs thereof. The obligations of Philips described above are Philips' only obligations and the Customer's sole and exclusive remedy for the breach of such warranty.
- 6.2 Unless otherwise stated in the Agreement, Philips warrants that – under proper use – (a) the Hardware Deliverables for which no specific acceptance procedure has applied shall, at the time of delivery to Customer and for a period of six (6) months as from the date of delivery, substantially conform to the Specifications and be free from defects in materials or workmanship, and, (b) the Hardware Deliverables for which a specific acceptance procedure has applied shall, at the time of delivery to Customer and for a period of six (6) months as from the date of delivery, be free from defects in materials or workmanship, it being understood that this warranty does not cover:
- (a) any defects sustained by normal wear and tear,
  - (b) any defects resulting from abuse, negligence, loss, accident or improper handling or use - including use outside the Specifications - of the Hardware Deliverables or parts thereof by Customer or Customer's agents, or
  - (c) any defects arising of maintenance by unauthorized persons or third parties, or
  - (d) any defects due to improper storage in the event of the Hardware Deliverables being wholly or partly stored by the Customer prior to installation, use or resale to ultimate buyers, or damage in transit; or
  - (e) any defects arising in consequence of environmental or stress testing; or
  - (f) modifications to the Hardware Deliverables or products incorporating the Hardware Deliverables not authorized by Philips; or
  - (g) any defects arising from combination of the Hardware Deliverable with other hardware or software; or
  - (h) any defects arising from Philips compliance with the instructions or specifications of Customer or from materials, hardware or software provided or prescribed by Customer.
- Philips sole and exclusive obligation under this warranty shall be limited, at Philips's option and expense, to (a) supply to Customer free of charge, replacements of such parts of the Hardware Deliverables as have proved to have such defects or non-conformities as specified above or, (b) repair (or have repaired) such parts, or (c) reimburse or credits the Customer for an appropriate part of the price, provided that Philips is informed by Customer in writing within thirty (30) days after the defects or non-conformities have revealed themselves and the defective or non-conforming Hardware Deliverables have been placed at Philips' disposal. Philips shall have a reasonable time with a minimum of thirty (30) days to repair, replace or reimburse. The defective or non-conforming parts shall become Philips property as soon as they have been replaced. The obligations of Philips described above are Philips' only obligations and the Customer's sole and exclusive remedy for the breach of the above warranty.
- 6.3 Software Deliverables are delivered by Philips to Customer on an "AS IS" basis, without any warranty of any kind.. Philips does not provide a warranty for any third party software furnished to the

Customer by Philips under the Agreement. The obligations of Philips described above are Philips' only obligations and the customer's sole and exclusive remedy for the breach of such warranty.

- 6.4 If Work Products are to be delivered, such Work Products are delivered by Philips to Customer on an "AS IS" basis, without any warranty of any kind.
- 6.5 Unless otherwise explicitly agreed to in writing, Philips does not warrant that any Software Deliverables or Work Products in the form of software supplied under the Agreement does not contain any Open Source Software nor bugs or viruses.
- 6.6 Philips will not, and therefore it is Customer's sole responsibility to assess whether the Deliverables infringe third party Intellectual Property and the Customer explicitly accepts that Philips will have no liability in this respect, even if Philips is advised of the possibility of such infringement.
- 6.7 EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, NOTHING IN THE AGREEMENT SHALL BE CONSTRUED AS AND PHILIPS EXPRESSLY DISCLAIMS ALL CONDITIONS, OBLIGATIONS, REPRESENTATIONS OR WARRANTIES, WHETHER STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO,
- (A) ANY WARRANTY RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USE OF TRADE, ABSENCE OF ERRORS OR BUGS, UNINTERRUPTED OPERATION, ACCURACY OR COMPLETENESS OF RESULTS ARISING FROM THE PERFORMANCE OR USE OF THE SERVICES AND/OR SUPPLY OR USE OF THE DELIVERABLES OR ANYTHING ELSE PROVIDED BY PHILIPS UNDER THE AGREEMENT, AND
- (B) ANY WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF ANY APPLICABLE INTELLECTUAL PROPERTY RIGHT, AND
- (C) ANY WARRANTY OR REPRESENTATION THAT ANYTHING MADE, USED, SOLD, OR OTHERWISE DISPOSED OF UNDER ANY LICENSE GRANTED IN THE AGREEMENT OR ANYTHING PROVIDED BY PHILIPS UNDER THE AGREEMENT IS OR WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT, AND
- (D) ANY OBLIGATION TO BRING OR PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. PHILIPS DOES NOT WARRANT THAT THE MEDIA USED ON THE DESIGNATED HARDWARE WILL BE COMPATIBLE WITH OR PERFORM ON ANY OTHER HARDWARE COMPONENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PHILIPS, ITS AFFILIATES, DISTRIBUTORS, DEALERS, AGENTS OR ITS OR THEIR EMPLOYEES, SHALL CREATE ANY WARRANTY. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE GENERAL TERMS AND CONDITIONS AND THE AGREEMENT.
- 6.8 SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET FORTH IN CLAUSE 9 OF THE GENERAL TERMS AND CONDITIONS, THE FOREGOING STATES PHILIPS' ENTIRE LIABILITY AND OBLIGATION TO CUSTOMER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE BREACH OF ANY WARRANTY.

## 7. Ownership of Intellectual Property

- 7.1. Subject to clause 7.3, Customer retains sole and exclusive ownership of any of its Intellectual Property.
- 7.2 Philips or its Affiliates retain sole and exclusive ownership of any of their respective Intellectual Property.
- 7.3 All Intellectual Property generated as a result of performing the Services or supplying the Deliverables and/or Work Products shall vest exclusively in Philips or any of its Affiliates. Customer agrees to take no action inconsistent with such ownership.

## 8. Licenses under Intellectual Property

- 8.1 License for Work Products and Deliverables excluding Hardware Deliverables. Subject to Customer's fulfillment of all of its obligations under the Agreement and subject to any prior commitments to third parties as well as to the provisions of clauses 8.3, 8.7 to 8.9 included hereunder, Customer shall have a perpetual, non-exclusive, world-wide, non-transferable, royalty-free and fully paid-up license under any Philips Intellectual Property to use Work Products, Process Deliverables, Software Deliverables and Documentary Deliverables in Customer's business, provided however that such Work Products and such Deliverables are to be used only by Customer's employees, and Customer may not reproduce, distribute, rent, communicate to the public, assign, transfer, lease or sublicense any of such Work

Products and such Deliverables to any other person or entity without Philips prior written consent.

- 8.2 License for Hardware Deliverables. Subject to Customer's fulfillment of all of its obligations under the Agreement and subject to any prior commitments to third parties as well as to the provisions of 8.3 and 8.9 hereof, Customer shall have a perpetual, non-exclusive, world-wide, non-transferable, royalty-free and fully paid-up license under any Philips Intellectual Property to use, lease, sell or otherwise dispose of Hardware Deliverables.
- 8.3 No other licenses in relation to Work Products and Deliverables. The licenses granted to Customer pursuant to clauses 8.1 and 8.2 here above do not include a license, immunity or other right under any Philips Intellectual Property, either directly or by implication, estoppel, operation of law or otherwise, for any other purposes, including without limitation for (i) products manufactured by using Process Deliverables or manufactured by means of Hardware Deliverables if and to the extent such products infringe any other Philips Intellectual Property than that infringed by respectively said Process Deliverables or said Hardware Deliverables, (ii) processes or methods used in or with Hardware Deliverables or contained in Work Products, unless such processes or methods have been specifically defined as Process Deliverables in Philips Offer, or (iii) software used in or with Hardware Deliverables, even if embedded, or contained in Work Products, unless such software has been specifically defined as Software Deliverable in Philips Offer.
- 8.4 Offer of license for manufacturing and disposing of Hardware Deliverables. If so requested by Customer, Philips shall grant and shall cause its Affiliates to grant on reasonable terms and conditions to Customer, subject to any prior commitments to third parties as well as to the provisions of clause 8.9 hereunder, a perpetual, non-exclusive, world-wide, non-transferable, royalty-bearing license under any Philips Intellectual Property to make Hardware Deliverables or to have Hardware Deliverables made by a third party acceptable to Philips, and to use, lease, sell or otherwise dispose of the Hardware Deliverables so made by or for Customer.
- 8.5 Offer of license for copying and distributing Software Deliverables. If so requested by Customer, Philips shall grant and shall cause its Affiliates to grant on reasonable terms and conditions to Customer, subject to any prior commitments to third parties as well as to the provisions of clauses 8.7 to 8.9 hereunder, a perpetual, non-exclusive, world-wide, non-transferable, royalty-bearing license under any Philips Intellectual Property to make and distribute copies of Software Deliverables.
- 8.6 Open source limitation on all licenses. Customer warrants that it shall not perform any actions with regard to any software licensed under the Agreement in a manner that would require the licensed software or any derivative work thereof to be licensed under Open License Terms. These actions include but are not limited to:
- (a) combining the licensed software or a derivative work thereof with Open Source Software, by means of incorporation or linking or otherwise; or
- (b) using Open Source Software to create a derivative work of the licensed software.
- 8.7 Customer's covenant concerning software. Customer shall in no event, except as expressly stated in the above mentioned licenses or unless and only to the extent permitted by mandatory law applicable to the Agreement: (a) modify, adapt, alter, translate, or create derivative works from, any software provided by Philips under the Agreement; (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. Customer 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 under the Agreement.
- 8.8 No sale of software, and no license to source code. Any software provided under the Agreement and any compilation or derivative thereof is the proprietary information of Philips and/or its Affiliates and is confidential in nature. The software provided under the Agreement is not sold and no ownership or assignment of any Intellectual Property is intended nor shall be implied. No rights or licenses with respect to any software source code are granted by Philips and/or its Affiliates to Customer.

8.9 **Exceptions.** No licenses, immunity or other rights are granted to Customer, either directly or by implication, estoppel, operation of law or otherwise, under any Philips Intellectual Property that (i) would require payment of royalty or other consideration by Philips and/or its Affiliates to a third party, (ii) is necessarily infringed by implementing a standard adopted by a standard setting body and/or agreed between two or more companies, or (iii) is licensed as part of an industry wide licensing program.

8.10 **No license.** Except as expressly set forth in this clause 8, Customer acknowledges and agrees that nothing contained in these General Terms and Conditions shall be construed as granting to Customer any license, immunity or other right under any Intellectual Property, either directly or by implication, estoppel, operation of law or otherwise.

## 9. Limitation of liability and indemnification

9.1 Philips Indemnified Parties shall not be liable for any Losses and Customer shall defend, indemnify and hold Philips Indemnified Parties harmless against any and all Third Party Claims against any Philips Indemnified Parties and any Losses related to such Third Party Claims, arising out of or relating to (i) the death of or injury to any person or any damage to property or any other damage directly or indirectly resulting from the Customer Supplies, any acts or omissions of Customer's or any of its Affiliates' employees, officers, agents or representatives, Customer's breach of any of its warranties or obligations under the Agreement, or from the development, manufacture, delivery, sale, use or any other disposition of any Deliverables or the performance, use or any other disposition of the Services or anything else provided under the Agreement, or (ii) the infringement of any third party Intellectual Property, except to the extent such Losses or Third Party Claims arise from Philips gross negligence or wilful misconduct.

9.2 Except as specifically provided otherwise in an Offer, Philips' Deliverables and Work Products are not designed, authorized or warranted to be suitable for use in medical, military, air craft, space or life support equipment nor in application where failure or malfunction of a Philips' Deliverable or Work Product can reasonably be expected to result in a personal injury, death or severe property or environmental damage, and inclusion and /or use of Philips' Deliverable or Work Product in such equipment or applications, without prior authorization in writing of Philips, is not permitted and for Customer's own risk, and Customer agrees to fully indemnify Philips for any damages resulting from such inclusion or use.

9.3 IN NO EVENT SHALL PHILIPS OR ANY OF ITS AFFILIATES BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHICH INCLUDES WITHOUT LIMITATION LOSS OF PROFITS, SAVINGS, TURNOVER, GOODWILL, REPUTATION OR DATA, WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY AND EVEN IF PHILIPS OR ANY OF ITS AFFILIATES WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.4 PHILIPS' AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY UNDER THE AGREEMENT SHALL NOT EXCEED THE TWENTY PERCENT (20%) OF AMOUNT ACTUALLY RECEIVED BY PHILIPS FOR THE SERVICES PERFORMED UNDER THE AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY FOLLOWING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY. CUSTOMER SHALL INDEMNIFY PHILIPS AND ITS AFFILIATES FOR ANY THIRD PARTY CLAIM OR LOSSES OVER AND ABOVE SAID AMOUNT.

9.5 Any Customer's claim for Losses must be brought by Customer 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 in conflict with the preceding sentence are null and void.

## 10. Confidential Information

10.1 Neither Party shall use, employ or disclose Confidential Information received from the other Party whether orally, in writing, by demonstration or otherwise, - except to the extent necessary to implement the Agreement and in such case, subject to the prior written approval of Philips if disclosure to third parties by Customer would be necessary to implement the Agreement -, unless and to the extent the receiving Party can prove by written record that:

- (a) is or has become part of the public domain without violation of the Agreement; or

- (b) is known and on record at the receiving Party prior to disclosure by the disclosing Party; or
- (c) is lawfully obtained by the receiving Party from a third party who is not bound by similar confidentiality obligations; or
- (d) is developed by the receiving Party completely independently of any such disclosure by the disclosing Party.

10.2 In the event the receiving Party receives a subpoena or court order to disclose any Confidential Information, the receiving Party shall deliver prompt written notice to the disclosing Party and shall cooperate with the disclosing Party in its attempts to obtain a protective order or other similar protection for the Confidential Information.

10.3 The provisions of this clause 10 shall retroactively be in full force and effect from the date first contacts were established with respect to the subject matter of the Agreement and shall remain in full force and effect during the duration of the Agreement and five (5) years thereafter.

10.4 Immediately following the termination or expiration of the Agreement, upon request of the disclosing Party, the receiving Party will return all media containing Confidential Information and will make no further use thereof.

## 11. Termination

11.1 The Agreement will remain in force until the completion of the Services or for the term as specified in the Agreement, if any. If the Agreement has been entered into for an indefinite period, Philips may terminate the Agreement by giving three (3) months written notice to Customer, unless otherwise explicitly agreed to in writing. In no event shall Philips be liable for any compensation or damage for such termination or expiration.

11.2 In the event a Party fails to comply with its material obligations under the Agreement, the other Party may terminate the Agreement with immediate effect if the Party in default has failed to remedy such default within thirty (30) days as from the receipt of a written notice of default detailing in a reasonably manner the nature of the default.

11.3 Either Party may, by written notice to the other Party, terminate with immediate effect the Agreement, or any part thereof, without any liability whatsoever, if:

- (a) the other Party does not comply with its payment obligations under the Agreement;
- (b) any proceedings in insolvency, bankruptcy, liquidation or winding up – including through merger or reorganization – are instituted against the other Party, voluntarily or involuntarily, or if a trustee or receiver is appointed over the other Party, or any assignment is made for the creditors of the other Party.

11.4 Subject to Philips' written prior approval, Customer may terminate the Agreement or part thereof for convenience and Philips shall therefore stop as soon as reasonably possible the performance of the Agreement or the relevant part thereof. Upon termination for convenience, Customer shall pay Philips:

- (i) all outstanding invoices for Services performed until the termination; and
- (ii) costs incurred by Philips due to the early termination by Customer, including but not limited to costs of manpower of Philips own and temporary or seconded staff allocated to the performance of the Agreement incurred by Philips during the period needed to reallocate such staff; and
- (iii) Ten percent (10%) of the amount Customer would have been invoiced for the remaining part of the Agreement had the Agreement been performed in full.

## 12. Effects of Termination

12.1 If at the time of the termination or expiration of the Agreement, Customer has received the benefit of any part of the performance of the Agreement, Customer shall pay (i) immediately upon such termination or expiration, the amounts invoiced by Philips for the Services performed under the Agreement before the termination or expiration or (ii) the pro rata amounts invoiced by Philips for partial performance, as the case may be.

12.2 If Philips reasonably assumes that Customer has failed, will fail, or enters in a position in which its is likely to fail to comply with its payment obligations, Philips will be entitled to suspend its obligations under the Agreement and to set further requirements as

security for the amount that is due and future payment obligations.

12.3 In the event of termination or expiration of the Agreement, the terms and conditions destined – whether expressed or not - to survive such termination or expiration, which shall include without limitation clauses 6, 9, 10, 12, 16 and 17 shall survive.

### 13. Force Majeure

13.1 Neither Party shall be bound to comply with any of its obligations under the Agreement if it is prevented from doing so through Force Majeure.

13.2 If the Force Majeure has lasted for more than sixty (60) days, the other Party will be entitled to terminate with immediate effect the Agreement or part thereof by written notification, without prejudice to Philips' right to compensation for what Philips has already performed under the Agreement.

### 14. Assignment

Customer shall not assign any rights or obligations under the Agreement without the prior written consent of Philips. Customer acknowledges and agrees that Philips may delegate and/or formally assign all or part of its rights and obligations under the Agreement to any other Philips' Affiliate or to any third party to which it has outsourced its activities in whole or in part.

### 15. Compliance with laws and Export Control

15.1 Customer represents that, with respect to its performance under the Agreement, it will comply with all applicable laws and regulations, including but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

15.2 If the delivery of a Deliverable or a Service 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 Customer'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 Customer. Furthermore, if an end-user statement is required, Philips shall inform Customer immediately thereof and Customer shall provide Philips with such document upon Philips first written request; if an import license is required, Customer shall inform Philips immediately thereof and Customer shall provide Philips with such document as soon as it is available. Customer warrants that it will not deal with the Services in violation of any applicable export or import control laws and regulations.

### 16. Non solicitation

Customer will not directly or indirectly solicit any Philips' employee for employment during the term of the Agreement and one (1) year thereafter, provided that this clause shall not apply to the hiring or engagement of any Philips' employee who has responded at his/her own initiative to a general solicitation for employment that in essence is not focused on Philips' employees.

### 17. Governing law and forum

17.1 All Offers, Confirmations and Agreements are governed by and shall be construed in accordance with the laws of The Netherlands, without giving regard to its conflict of law principles. The UN Convention on Contracts for the International Sale of Goods shall not apply to any Offer, Confirmation or Agreement.

17.3 All disputes arising out of or in connection with any Offer, Confirmation or Agreement shall first be attempted by Customer and Philips to be settled through consultation and negotiations in good faith and a spirit of mutual cooperation. If such a dispute is solely of a technical nature, the Parties shall first consider, but are not obliged, to submit such dispute to mediation by a mutually-acceptable, certified international institute able to resolve the dispute. In such case, the Parties agree that the decision of such institute shall be final and binding with respect to such dispute. Each Party shall bear its own costs with respect to such mediation, except costs of the international institute, which shall be equally divided between the Parties. The maximum amount of time allowed for any

such mediation-proceedings shall be three months from the start of such proceedings.

17.4 All disputes that have not been settled as per clause 17.3 shall be submitted to the competent court in Amsterdam, the Netherlands, provided that Philips shall always be permitted to bring any action or proceedings against Customer in any other court of competent jurisdiction. Nothing in this Agreement shall be construed or interpreted as a limitation of Philips' right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on Customer.

### 18. Miscellaneous

18.1 In the event that any provision of the Agreement or these General Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, the validity and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided that in such case the Parties shall use all reasonable efforts to achieve the purpose of the invalid or unenforceable provision.

18.2 Either Party's failure to exercise, or 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 from any related document or by law.

18.3 All notices and communications to be given under the 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.

18.4 Philips reserves the right to make any amendments or modifications to these General Terms and Conditions at any time. Such amendments and modifications shall have effect (a) on all Offers, Confirmations and Agreements referring to such amended or modified General Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (b) on any existing Agreement thirty (30) days from notification of such amendments or modifications by Philips to Customer, unless Customer has notified Philips within such thirty (30) days period that it objects thereto.

### 19. Definitions

Except as otherwise explicitly agreed to in writing, the following terms shall have the meanings set out below:

**"Affiliate"** shall mean an entity, which is directly or indirectly: (i) owned or controlled by a Party, (ii) owning or controlling such Party, or (iii) owned or controlled by the entity owning or controlling such Party, but any such entity shall only be deemed an Affiliate for the period such ownership or control exists. For the purposes of this definition, an 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 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 entity) is held by and consolidated in the annual accounts of the owning or controlling entity.

**"Agreement"** shall mean any agreement resulting from an Offer or Confirmation and any agreement incorporating these General Terms and Conditions by reference.

**"Confidential Information"** shall mean any and all information relating to the disclosing Party's products, services, software, research, development, trade secrets, marketing and business plans, strategies, customers, management and personnel.

**"Confirmation"** shall mean any acceptance, acknowledgement or confirmation by Philips of any order of Customer.

**"Customer"** shall mean the person or company addressed in an Offer or identified as such in the Agreement.

**"Customer Supplies"** shall mean any and all tools - including CAD systems and applicable licenses -, parts of equipments provided by Customer.

**"Deliverable"** shall mean any deliverable to be provided by Philips as defined in the Agreement including, but not limited to, Documentary

Deliverable, Hardware Deliverable, Process Deliverable, Software Deliverable or training.

"Delivery Date" shall mean the last date communicated or acknowledged by Philips in writing for the delivery of the Services or the Deliverables.

"Documentary Deliverable" shall mean any Deliverable in the form of reports or other documentation (excluding Software Deliverable) submitted to Customer pursuant to the Agreement.

"Efforts" shall mean commercially reasonable efforts consisting of having the Services performed by skilled employees in the number as set forth in the Agreement and applying the degree of care and skill ordinarily exercised by employees of the same profession in similar circumstances.

"Force Majeure" shall mean any circumstances or occurrences beyond a Party's reasonable control - whether or not foreseeable at the time of the Order, Confirmation or Agreement – as a result of which a Party 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, labor, materials or components.

"Hardware Deliverable" shall mean any Deliverable in the form of three-dimensional objects (excluding Documentary Deliverables) submitted to the Customer pursuant to the Offer or Agreement, such as but not limited to equipment or any part thereof, but excluding any Software Deliverables, even if embedded.

"Intellectual Property" shall mean patents, utility models, registered and unregistered designs, copyrights, database rights, know-how, semiconductor IC topography rights, and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of the foregoing. The Intellectual Property shall not include trademarks.

"Losses" shall mean any and all fines, losses, damages, costs and expenses - such as but not limited to reasonable attorneys' fees -.

"Offer" shall mean any quotation or offer made by Philips to Customer.

"Open Source Software" shall mean any software that is licensed under Open License Terms.

"Open License Terms" shall mean terms in any license that require as a condition of use, modification and/or distribution of a work

1. the making available of source code or other materials preferred for modification, or
2. the granting of permission for creating derivative works, or
3. the reproduction of certain notices or license terms in derivative works or accompanying documentation, or
4. the granting of a royalty-free license to any party under Intellectual Property regarding the work and/or any work that

contains, is combined with, requires or otherwise is based on the work.

"Party" or "Parties" shall mean, individually, Philips or the Customer and, collectively, Philips and the Customer.

"Philips Indemnified Parties" shall mean Philips and its Affiliates, their trustees, shareholders, officers, directors, agents and employees.

"Philips" shall mean Philips Electronics Nederland B.V. acting through Philips Applied Technologies.

"Philips Intellectual Property" shall mean the Intellectual Property described in clauses 7.2 and 7.3.

"Process Deliverable" shall mean any Deliverable, explicitly described in the Offer or Agreement, in the form of operating principles or concepts for manufacturing or testing, such as without limitation physical, chemical, mechanical or organizational principles or concepts created by Philips for the Customer pursuant to the Offer or Agreement including any modifications of existing manufacturing processes or existing testing methods as well as related instructions, explanations, methodologies therefore, and demonstrations thereof.

"Services" shall mean the services, such as but not limited to consultancy services, training services, design or development services to be provided by Philips, including the supply of any Deliverable resulting therefrom or not and the making available of Work Products, as defined in the Agreement

"Software Deliverable" shall mean any Deliverable, explicitly described in the Offer or the Agreement, in the form of computer software, including but not limited to object code and source code, submitted to Customer pursuant to the Offer or the Agreement.

"Specifications" shall mean all detailed specifications, hardware, material and other specific requirements as well as acceptance criteria and packaging specifications with regard to the Deliverables as specified in detail in the annexes to the Offer or the Agreement per Deliverable.

"Taxes" shall mean any and all value-added tax (VAT), sales tax or like kind taxes, fees, levies, imposts, duties, assessments, charges, customs duties or withholdings of whatever nature.

"Third Party Claim" shall mean any claim or suit brought directly or indirectly by any third party.

"Work Product" shall mean any (i) engineering or production material, development method, equipment, tool or instrumentality that deviates from the established activities or the own tools of Philips and that are created or developed by Philips for the performance of the Services, but excluding the Services and Deliverables themselves, and (ii) work product created or developed by Philips in the course of the performance of the Services but excluding the Services and Deliverables themselves, such as but not limited to software, firmware, mask works, risk production unit, experimental deliverable, beta testing deliverable, sample of newly developed deliverable, report, document, memorandum, manual, material, photographic slide, artwork, graphic, idea or concept.