

## **TERMS AND CONDITIONS OF COMMERCIAL SALE OF TP VISION NORWAY**

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

These terms and conditions of commercial sale of TP Vision Norway AS (the “Terms and Conditions”) apply to and form an integral part of all quotations and offers made by TP Vision Norway AS (“TP Vision”), all acceptances, acknowledgements and confirmations by TP Vision of any orders by Buyer and any agreements (“Agreements”) regarding the sale by TP Vision and purchase by Buyer of Philips branded television goods and services (“Products”), unless and to the extent TP Vision 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 TP Vision setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by TP Vision, and any such terms shall be wholly inapplicable to any sale made by TP Vision to Buyer and shall not be binding in any way on TP Vision.

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in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by TP Vision at any time prior to the receipt by TP Vision of Buyer’s acceptance thereof.

### **2. PRICING**

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

### **3. PAYMENT**

- (a) Unless agreed otherwise between TP Vision and Buyer in writing, TP Vision may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between TP Vision and Buyer in writing. All payments shall be made to the designated 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 TP Vision. In addition to any other rights and remedies TP Vision may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.
- (b) All deliveries of Products agreed to by TP Vision shall at all times be subject to credit approval of TP Vision. If, in TP Vision’s judgment, Buyer’s financial condition at any time does not justify production or delivery of Products on the above payment terms, TP Vision may require full or partial payment in advance or other payment terms as a condition to delivery, and TP Vision may suspend, delay or cancel any credit, delivery or any other performance by TP Vision.
- (c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, TP Vision shall have the right to refuse performance and/or delivery of any Products until payments are brought current and TP Vision may suspend, delay or cancel any credit, delivery or any other performance by TP Vision. 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 CIP (INCOTERMS latest version) as designated by TP Vision, unless otherwise agreed in writing. TP Vision shall communicate or acknowledge the requested delivery date provided that Buyer provides all necessary order and delivery information sufficiently prior to the requested delivery date.

- (b) Unless otherwise agreed, Buyer will give TP Vision written notice of failure to deliver and thirty (30) days within which to cure. If TP Vision 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 TP Vision's delivery in accordance with the applicable INCOTERMS.
- (d) If Buyer fails to take delivery of Products ordered, then TP Vision may deliver the Products in consignment at Buyer's cost.

#### 5. FORCE MAJEURE

TP Vision 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 TP Vision being responsible or liable to Buyer for any damage resulting therefrom.

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

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

#### 7. LIMITED WARRANTY AND DISCLAIMER

- (a) TP Vision 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 TP Vision) 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 TP Vision's specifications for such Product, or such other specifications as TP Vision has agreed to in writing, as applicable. TP Vision's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at TP Vision'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. TP Vision will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become TP Vision's property as soon as they have been replaced or credited.

- (b) Buyer may ship Products returned under warranty to TP Vision's designated facility only in conformance with TP Vision's then-current return material authorization policy. Where a warranty claim is justified, TP Vision will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.
- (c) Notwithstanding the foregoing, TP Vision 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. All other warranties are hereby specifically disclaimed by TP Vision.
- (e) Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states the entire liability of TP Vision in connection with defective or non-conforming Products supplied hereunder.

#### 8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- (a) TP Vision, 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 TP Vision 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) TP Vision shall have no obligation or liability to Buyer under Section (a) (1) if TP Vision 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 TP Vision's opinion is likely to become, the subject of a claim of infringement as referred to under Section 8 (a) above, TP Vision 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 TP Vision'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 OF LIABILITY

- (a) TP VISION 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 TP VISION OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF TP VISION HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

TP VISION'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 TP Vision and/or its affiliates is the confidential information of TP Vision 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

If the delivery of Products 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, TP Vision 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 TP Vision may even terminate the Agreement, without incurring any liability towards Buyer. Furthermore, if an end-user statement is required, TP Vision shall inform Buyer immediately thereof and Buyer shall provide TP Vision with such document upon TP Vision's first written request; if an import license is required, Buyer shall inform TP Vision immediately thereof and Buyer shall provide TP Vision with such document as soon as it is available. By accepting TP Vision's 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.

#### 12. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of TP Vision. 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 TP Vision 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 Norway. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and TP Vision 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 Norway, provided that TP Vision 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 TP Vision's 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 TP Vision may have under the Agreement or at law, TP Vision may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Buyer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted

against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer.

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. USE OF WORD MARK "PHILIPS"

For purposes of advertising and selling the Products, permission is granted to Buyer to use the word mark "Philips" but only as specified on the website [pwww.ourbrand.philips.com](http://pwww.ourbrand.philips.com). Buyer hereby acknowledges all rights, title and interest of the registered proprietor Koninklijke Philips Electronics N.V. in respect of and to the name Philips and the word mark "Philips". It is expressly understood that Buyer shall not obtain any rights to said name and trade mark by the use and/or marketing of the Products marked or branded with said name and/or trade mark and the applications thereof as permitted hereunder shall not be construed as use for Buyer's benefit.

Buyer shall not alter, deface, remove, cover or mutilate in any manner whatsoever the trademarks and the serial, model and/or type numbers attached or affixed to the Products.

On its web sites, Buyer may use the word mark "Philips" to identify the specific Philips products that it sells. Buyer may provide appropriate and correct links from its website to the relevant product sites of Philips. Buyer can create links by using an official button provided by Philips or by highlighting or underlining the word Philips on the website or by the specified product concerned in the text or by stating the relevant Philips' Uniform Resource Locators (URL's). Philips' Websites may not appear as a frame or in any other way, giving the impression that the Philips content belongs to the Buyer. Buyer may not copy or imitate the style of the Philips' websites or sections of it onto its own web site to avoid confusion to Internet users. Buyer is not entitled to register or use any domain name or URL containing the name Philips or any other trademark of Philips or the Philips group of companies.

Buyer is not authorized to use the word mark "Philips" or other trademarks of the Philips Group of Companies in search engines advertising, including but not limited to the Adwords program of Google. Buyer is not allowed to use the "Philips Shield" and/or the tag line "Sense and Simplicity".