philips general conditions of purchase - germany

1. Definitions

In this document:
(a) "Affiliate" shall mean (i) in the case of Philips, Koninklijke Philips N.V. and/or the case of Philips and Supplier, any and all other companies, firms and legal entities with respect to which now or hereafter Koninklijke Philips N.V. or Supplier respectively, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50% or more of the voting power at general meetings of such company or firm or legal entity, or otherwise appoints a majority of directors, or otherwise directs the activities of such company, firm or legal entity; (b) "Agreement" shall mean the binding contract formed as described in Section 2.1 herein; (c) "Applicable data protection law" means all applicable law pertaining to the Processing of Personal Data, whether or not by automatic means, such as creation, access, collection, recording, organization, storage, loading, employing, adaptation or alteration, retrieval, consultation, displaying, use, disclosure, transfer, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (hereinafter also referred to as a verb "Process"); (d) "(i) Philips shall mean the purchasing Affiliate of Koninklijke Philips N.V. identified in Philips' order and where applicable includes other Affiliates of Philips; (j) "Philips Information" means all information in any form about, or pertaining to, a third party and/or on the operations of Philips, including (i) any information related to the relations or contracts between Supplier and Supplier respectively, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50% or more of the voting power at general meetings of such company or firm or legal entity, or otherwise appoints a majority of directors or otherwise directs the activities of such company, firm or legal entity; (ii) in the case of Philips and Supplier, companies, firms or legal entities, including subsidiaries, divisions, branches, subsidiaries of subsidiaries, branches of branches, in which Philips and Supplier respectively, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50% or more of the voting power at general meetings of such company or firm or legal entity, or otherwise appoints a majority of directors, or otherwise directs the activities of such company, firm or legal entity; (iii) all deliverables (including future deliverables) and other data, results, material, data structures and documentation accessed by Supplier in performing the Agreement or generated by (an IT system of Supplier) - as a rule – be effected within two (2) weeks from receipt of the Goods. Notification of hidden defects shall be effected promptly after their discovery. If Philips does reject any of the Goods the rights and remedies set out in Section 10 below shall apply accordingly. Within two (2) weeks from such rejection Supplier shall collect the Goods from Philips at its own expense. If Supplier does not collect the Goods within said two (2) weeks period, Philips may have the Goods delivered to Supplier at Supplier's own cost and, or, with the Supplier's prior consent may destroy the Goods, without prejudice to any other right or remedy Philips may have under the Agreement or at law.
6.4 If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to conform to the Agreement, Philips may reject and return the entire shipment or portion thereof without further inspection or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Supplier the cost of such inspection.
7. Performance of Services
1.1 Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.
1.2 Supplier shall be liable for the acts and omissions of any and all third parties with which it has contracted in connection with the Services, subject to Philips' prior written consent.
1.3 Only written confirmation by Philips shall constitute acceptance of the Services performed. If Philips does not accept the Service and/or Work Product(s), the rights and remedies in Section 10 below shall apply accordingly. Philips shall promptly notify Supplier of such rejection, and Supplier will, at its own expense, carry out the necessary corrections, additions, modifications or rework reasonably requested by Philips in writing within thirty (30) days of such notification.
8. Prices: Payment
8.1 Unless otherwise provided otherwise in the Purchase Order, title in the Goods shall pass to Philips at the time risk is transferred to Philips pursuant to the applicable Incoterm.
8.2 All prices quoted in the Agreement shall be fixed prices. Supplier warrants that such prices are not in excess of the lowest prices charged by Supplier to other similarly situated customers for similar quantities of Goods or Services of like kind and quality.
8.3 All prices are gross amounts. Not exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax only. If the transactions, as described in the Agreement are subject to any applicable VAT, sales tax, GST, consumption tax or any other similar tax, Supplier may charge VAT, sales
tax, GST, consumption tax or any other similar tax to Philips, which shall be paid by Philips in addition to the prices quoted. Supplier is responsible for paying any applicable VAT, sales tax, GST, consumption tax or any other similar tax (tax) authorities. At or after the time delivery has been completed as per Section 4.2 but ultimately within six months from delivery, Supplier shall, in compliance with Philips’ instructions regarding the invoicing process, issue an invoice in electronic form meeting all applicable legal and fiscal requirements, unless which shall contain: (i) a valid VAT identification number, and (ii) wording that shall allow Philips to take advantage of any applicable “input” tax deduction. In addition, Supplier shall inform Philips whether Philips is allowed to apply for an exemption if and to the extent allowed under applicable law in such specific situation.

8.4 Any license fees shall be included in the price.

8.5 Subject to the acceptance of the Goods, Services and/or Work Product(s) by Philips, and unless provided otherwise in the Purchase Order, payment shall be made seven (7) days from receipt of the correct invoice in accordance with Section 8.3 in the proper form.

8.6 If Supplier fails to fulfill any of its obligations under the Agreement, Philips may suspend payment to Supplier upon notice to Supplier.

8.7 Session, data, documentation and Work Product(s) and any of its Affiliates shall at all times have the right to set-off any amounts that any Philips Affiliate owes to Supplier or its Affiliates under this Agreement with any amounts that Supplier or its Affiliates owe to any Affiliate of Philips under the Agreement or any other agreements.

8.8 Supplier acknowledges and agrees that any amount to be paid by Philips to Supplier may be paid on Philips’ behalf by another Affiliate of Philips and/or a third party designated by Philips. Supplier shall treat such payment as if it were made by Philips itself and Philips’ obligation to pay to Supplier shall automatically be satisfied and discharged in the amount paid by supplier entity or third party.

9. Warranty

9.1 Supplier represents and warrants to Philips that all Goods and Work Product(s):
(a) are suitable for the intended purpose and shall be new, merchantable, of good quality and free from all defects in design, material, construction and workmanship;
(b) strictly comply with the specifications, approved samples and all other requirements under the Agreement;
(c) are delivered with all required licenses which are and shall remain valid and in place, and with the scope to properly cover the intended use; furthermore, all such licenses shall include the right to transfer and the right to grant sublicenses;
(d) shall be free from any and all liens and encumbrances;
(e) (d) shall not include any Open Source Software.
(f) (f) have been designed, manufactured and delivered, and all Services have been provided in compliance with all applicable laws and regulations, including, but not limited to the Ordinance on the restriction of hazardous substances in electrical and electronic equipment (“ElektroStoffV”), environmental, industrial health and safety regulations and accident prevention regulations, labor laws, the Act on the provision of products on the market ("Produkt sicherheitsgesetz"), and the Electrical and Electronic Equipment Act ("Elektro- und Elektronikgeraetegegesetz")
(g) are manufactured, delivered and performed in compliance with social, human rights, environmental and governmental laws and (duty of care) obligations, in particular in accordance with the Supply Chain Due Diligence Act (LKSG), the applicable human rights guidelines and the applicable version of the Responsible Care Information for suppliers at: https://www.philips.com/dam/corporate/about-philips/company/suppliers/supplier-sustainability/policies/philips-supplier-sustainability declaración.pdf, the policy statement of Philips according to the LKSG is published at: https://www.philips.de/corporate/de/about-philips/sustainability/Human-Rights-Policy-20230101.pdf.
(h) are provided with and accompanied by all information and instructions necessary for proper and safe use;
(i) its packaging and components supplied to Philips comply with the Regulated Substance List (RSL), which can be found at: http://www.philips.com/shared/global/assets/Sustainability/rsl.pdf or will be sent to Supplier upon its first written request. Supplier shall furnish to Philips any information required to enable Philips to comply with such laws, rules, and regulations in its use of the Goods and Services. Supplier agrees that, upon request of Philips, it shall register and use BOMcheck to make substance compliance declarations including ROHS, REACH and other applicable regulatory requirements by making declarations in BOMcheck to fully comply with the Philips RSL, unless otherwise agreed with Philips.
(j) Supplier will also adhere to future RSL changes following notification from BOMcheck or other non-registered correspondence and is and will be fully compliant with the updated Philips RSL within 3 months of receiving the notification, unless otherwise agreed with Philips.
(k) Goods and Work Products will be accompanied by written and detailed specifications of the composition and characteristics of the Goods, to enable Philips to transport, store, process, use and dispose of such Goods safely and in compliance with law.

9.2. These warranties are not exhaustive and shall not be deemed to exclude any warranties by law, Supplier’s standard warranties or other rights or warranties which Philips may be entitled to, but shall be in addition. These warranties are exclusive of any warranty by way of trade, sale, recommendation, advertising, or any other manner.

9.3. The warranties set forth in Section 9.1 will subsist for a period of thirty-six (36) months – or any applicable, statutory warranty period, whichever is longer – from the date of delivery as per Section 4.2, or such other period as agreed in the Agreement (the “Warranty Term”).

9.4. Goods repaired or replaced within the Warranty Term are warranted for the remainder of the original Warranty Term said Goods, or twenty-four (24) months following the delivery date of such repaired or replaced Goods, whichever is longer.

10. Non-conformity

10.1. If any Goods, Services or Work Product(s) are defective or otherwise do not conform to the warranties and any other requirements of the Agreement, Philips may at its sole discretion:
(a) demand Supplier to - at Philips’ discretion - either promptly repair or replace the nonconforming Goods or Work Products free of charge; and
(b) reduce the agreed price or rescind the Agreement in whole or in part or claim damages instead of performance if repair or replacement is still not or not successfully effected after expiry of a reasonable period of grace set by Philips; however, rescinding the Agreement does not disentitle Philips to claim damages instead of performance.

10.2. Philips shall be entitled to claim reimbursement of any costs incurred in relation to the inspection if the above-average occurrence of faults compels Philips to conduct incoming inspections over and above the usual level of random sample inspections. In the event of nonconforming Goods or Work Products which are not noticed until the Goods or Work Products are machined or processed by Philips or used, Philips shall be entitled to claim reimbursement of any costs incurred to no avail.

10.3. Supplier shall at all times have the right to set-off any amounts that any Philips Affiliate owes to Supplier or its Affiliates under this Agreement with any amounts that Supplier or its Affiliates owe to any Affiliate of Philips under the Agreement or any other agreements.

11. Partnership and Intellectual Property

11.1. All Work Products, machinery, tools, drawings, specifications, raw materials and any other property or materials furnished to Supplier by or for Philips for use in the performance of the Agreement, shall be and remain the sole exclusive property of Philips. All Work Products, machinery, tools, drawings, specifications, raw materials, deliverables and any other property or materials paid for by Philips shall at the time of manufacture become the sole exclusive property of Philips. If Philips’ property is processed to form a new item, any property processed shall take place at Supplier’s risk, and, (a) ownership by combining or mixing the Work Products with goods, it hereby assigns that portion to Philips. The transfer of possession shall be replaced by Supplier safeguarding the Work Product and any other item for Philips free of charge, and no delivery, acceptance, payment or transfer of the Work Products to third party without Philips’ prior written consent, and all information with respect thereto shall be confidential and proprietary information of Philips. In addition, any and all of the foregoing shall be used solely for the purpose of fulfilling orders from Philips, shall be marked as owned by Philips, shall be held at Supplier’s risk, shall be kept in good condition and, if necessary, shall be replaced by Supplier at Supplier’s expense, shall be subject to periodic inventory check by Supplier as reasonably requested from time to time by Philips, and shall be returned promptly upon Philips’ first request. Items in replacement for Philips’ property shall become the sole exclusive property of Philips. Transfer of possession shall be replaced by Supplier safeguarding the items for Philips free of charge. If the Supplier places an order with a sub-supplier for the manufacture of tools, machinery or models for the execution of this Agreement, and Philips pays for the tools, machinery or models, then the Supplier shall assign to Philips his claim against the sub-supplier for transfer of ownership in such tools, machinery or models. Except as otherwise expressly agreed in writing, Supplier agrees to furnish at its own expense all machinery, tools, and raw materials necessary to perform its obligations under the Agreement.

11.2. Supplier represents and warrants to Philips that the Goods, Work Products and Services do not and shall not, alone or in any combination, infringe or violate any third party’s (including Supplier’s employees and subcontractors) IP Rights.

11.3. The purchase of the Goods and Services shall confer on Philips and its Affiliates an irrevocable, worldwide, royalty-free and fully paid up, non-exclusive and perpetual license under all IP Rights owned or controlled, directly or indirectly, by Supplier to use, make, have made, build-in, have built-in, market, sell,
lease, license, distribute and/or otherwise dispose of the Goods, and/or Ser-
vice, including but not limited to machinery, tools, drawings, designs, software,
data sets, molds, specifications or pieces.
11.4 Supplier shall not have any right, title or interest in or to any of Philips’
samples, data, works, materials, trademarks and intellectual and other property
nor shall the supply of Goods and/or Services alone or in any combination, or
the supply of packaging containing Philips’ trademarks or trade names give
Supplier any right or title to these or similar trademarks or trade names. Sup-
plier shall not use any trademark, trade name or other indication in relation to
the Goods or Services alone or in any combination without Philips’ prior written
approval and any use of any trademark, trade name or other indication as au-
torized by Philips is strictly in accordance with the instructions of and for
the purposes specified by Philips.
11.5 Supplier shall not, without Philips’ prior written consent, publicly make any
reference to Philips, whether in press releases, advertisements, sales literature
or otherwise.
12. Intellectual Property Indemnification
12.1 Supplier shall indemnify and hold harmless Philips, its Affiliates, agents and
employees and any person selling or using any of Philips’ products in re-
spect of any and all claims, damages, costs and expenses (including but not
limited to loss of profit and reasonable attorneys’ fees) in connection with any
third party claim that any of the Goods, Work Products or Services alone or in
any combination or their use infringes any third party IPRs, or, if so directed by
Philips, shall defend any such claim at Supplier’s own expense.
12.2 Supplier shall give an express written warranty with respect to any such
claim, pro-
vided, however, any delay in notice shall not relieve Supplier of its obligations
hereunder except to the extent it is prejudiced by such delay. Supplier shall
provide all assistance in connection with any such claim as Philips may rea-
sonably require.
12.3 If any Goods, Work Products or Services alone or in any combination,
supplied under the Agreement are held to constitute an infringement or if their
use is enjoined, Supplier shall, as directed by Philips, but at its own expense:
(a) procure for Philips or customers the right to continue using the Goods, Work
Products or Services alone or in any combination; or
(b) replace or modify the Goods, Work Products or Services alone or in any
combination, non-infringing copy, or
(c) refund to Philips the contract price, or
(d) replace or modify the Goods, Work Products or Services alone or in any
combination, to the extent that Philips may require by contract.
12.4 If Supplier is unable either to procure for Philips the right to continue
the Goods, Work Products or Services alone or in any combination or to
replace or modify the Goods, Work Products or Services alone or in any com-
bination, to the extent that Philips may so require by contract, Supplier may res- pend the Goods, and the Work Products and Services covered by the Agreement, in
any manner caused or claimed to be caused by the acts, omissions, faults,
breach of express or implied warranty, defects, breach of any of the provisions
of this Agreement, non-compliance with laws, tort or negligence of Supplier, its
subcontractors, sub-suppliers or agencies for temporary work to comply with the Ger-
man law and the Goods or Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults,
breach of express or implied warranty, defects, breach of any of the provisions
of this Agreement, liability and assets based on the principles of confidentiality, integrity and avail-
bility.
17. Export Controls Compliance
17.1 Supplier agrees and warrants that it will comply with all applicable inter-
national and national export control laws and regulations and it will not export or re-export, directly or indirectly, any information, goods, software and/or technol-
ogy to any country for which the European Union or the United States of America or any other country, in the event of export or re-export, requires an
export license or other governmental approval, without first obtaining such li-
cense or approval.
17.2 Supplier acknowledges that any data or other information processed by
Supplier in the course of its engagement by Philips might be controlled information
under export control laws and regulations and that it will not deal with such in-
formation in violation of such laws and regulations. Supplier shall ensure that:
(a) International Transactions Data shall be encrypted at rest and in transit.
(b) International Transactions Data shall be encrypted at rest and in transit.
17.3 Supplier agrees to inform Philips in writing whether or not the supplied information, goods, software, technology, hosted application and/or services are US controlled and/or controlled under the export control laws of its own country. Supplier will inform Philips in writing not later than (including but not limited to export control legal jurisdiction, export control classification numbers, export control licenses and/or CCATS as applicable).

17.4 Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide Philips with all information required to enable Philips and its customers to comply with such laws and regulations.

17.5 Supplier agrees to indemnify and hold Philips harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorney’s fees), which Philips may incur due to Supplier’s non-compliance with applicable laws, rules and regulations. Supplier agrees to notify Philips promptly of Supplier’s receipt of any such notice of a violation of any export control laws, rules or regulations, which may affect Philips.

18. Conflicts of Interest

18.1 For all Goods that qualify for application of Regional or Free Trade Agreement, General Systems of Preference or other preferential arrangements, it is the express intent of the Parties to deliver products with the appropriate documentary evidence (e.g. Supplier’s declaration, preferential certificate of origin/invoice declaration) to confirm the preferential status of origin.

18.2 Supplier shall mark every Good (or the Good’s container if there is no marking place on the Good) with the country of origin/invoice declaration) to confirm the preferential status of origin.

18.3 Supplier shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt. If any Goods are imported, Supplier shall when possible allow Philips to be the importer of record. If Philips is not the importer of record and/or duty drawback rights in the Goods, Supplier shall, upon Philips’ request, provide Philips with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Philips.

19. Limitation of Liability

PHILIPS SHALL NOT BE LIABLE UNDER ANY THEORY OF LIABILITY, FOR INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH INCLUDE WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF IMPELLE OR LOST DATA, EVEN IF PHILIPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES and in no event shall Philips be liable to Supplier, its successors or assigns for damages in excess of the amount due to Supplier for complete performance under Agreement, less any amounts already paid to Supplier by Philips. These limitations of liability do not apply in cases of injury to life, body or health, if liability arises from gross negligence, intent or fraud, or for any liability that cannot by law be excluded or limited.

20. Force Majeure

In the event that any party is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Supplier) and Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of Supplier’s inability. Supplier shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt. If any Goods are imported, Supplier shall when possible allow Philips to be the importer of record. If Philips is not the importer of record and/or duty drawback rights in the Goods, Supplier shall, upon Philips’ request, provide Philips with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Philips.

21. Suspension, Rescission and Termination

21.1 Without prejudice to any other right or remedy available to Philips under the Agreement or at law, Philips shall be entitled at its discretion to suspend the performance of its obligations under the Agreement in whole or in part or to terminate and rescind respectively the Agreement in whole or in part by means of written notice to Supplier in the event that:
(a) Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar proceeding;
(b) Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar proceeding;
(c) Supplier fails to take the actions to cease to carry on business in the ordinary course;
(d) Supplier breaches any of its obligations under the Agreement or Philips, in its reasonable discretion, determines that Supplier cannot or shall not deliver the Goods or perform the Services as required or
(e) Supplier fails to provide adequate assurance of performance following request by Philips;
(f) Supplier does not provide the confirmations as set out in Section 14.2 or Philips becomes aware of facts that give rise to the presumption that Supplier is not duly complying with the German Act on Minimum Wages.

22. Confidentiality

22.1 Supplier shall treat all information provided by or on behalf of Philips or generated by Supplier for Philips under the Agreement as confidential. All such information shall be used by Supplier only for the purposes of the Agreement. Supplier shall not use the extent to which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of Philips and Supplier shall, upon Philips’ demand, promptly return to Philips all such information and shall not retain any copy thereof.

22.2 The existence and the contents of the Agreement shall be treated as confidential by Supplier.

23. Miscellaneous

23.1 Philips will maintain comprehensive or commercial general liability insurance (including products liability, property damage and personal injury liability, and any other liability as may be requested by Philips) with, unless otherwise agreed by Philips, a minimum limit of two million and five-hundred thousand Euros covering bodily injury, death, and damages that may arise from use of the Goods or Services or acts or omissions of Supplier under the Agreement. Such insurance policies will be written with appropriately licensed and financially responsible insurers. Supplier shall inform Philips of the names of the insurers and the possibility of such damages and in no event shall Philips be liable to damages in excess of the amount due to Supplier.

23.2 Supplier shall provide Goods and render Services hereunder as an independent contractor and not as an agent of Philips and Supplier agrees to create a partnership, joint venture or employment relationship between the parties irrespective of the extent of economic dependency of Supplier on Philips.

23.3 Supplier shall not (i) use subcontractors, sub-suppliers, auxiliary persons, agents or agencies for temporary work only upon prior written approval by Philips, and (ii) subcontract, transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of Philips.

23.4 The rights and remedies reserved to Philips are cumulative and in addition to any other or future rights and remedies available under the Agreement, at law or in equity.

23.5 Supplier shall provide Philips written notice of all product discontinuances twelve (12) months prior to the last order date, including as a minimum Philips’ part numbers, substitutions, and last order and shipment dates.

23.6 Neither the failure nor the delay of Philips to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of Philips to enforce each and every provision of the Agreement. No course or prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of the Agreement. No waiver, consent, modification or amendment of the terms of the Agreement shall be binding unless made in a writing specifically referring to the Agreement signed by Philips and Supplier.

23.7 If the event that any provisions of the General Terms and Conditions of Purchase and of the Agreement shall be held invalid, unlawful 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 of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

23.8 All terms and conditions of the Agreement which are destined, whether express or implied, to survive the termination or the expiration of the Agreement, shall be binding upon the successors and assigns of the respective parties, and any agreement to the contrary shall be void.

23.9 The Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany without giving effect to its conflict of laws’ principles.

23.10 If the Supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive jurisdiction between the supplier and Philips is intended to create a partnership, joint venture or employment relationship between the parties irrespective of the extent of economic dependency of Supplier on Philips. Any such provision held invalid, unlawful 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 of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

23.11 Notwithstanding Section 23.10, and to the extent legally allowed, at Philips’ option in cases in which Philips files a lawsuit. Philips may chose for arbitration in which case Section 23.12 applies. Supplier hereby waives all defenses of lack of personal jurisdiction and forum non-convenience.

23.12 If so chosen by Philips in accordance with Section 23.11, any dispute, controversy or claim arising out of or in connection with this Agreement, or their breach, termination or invalidity shall be finally settled solely under the International Chamber of Commerce Rules of Arbitration, which Supplier and Philips declare to be known to them. Supplier and Philips agree that: (i) the appointing authority shall be the ICC-International Chamber of Commerce of Paris; (ii) there shall be three (3) arbitrators; (iii) arbitration shall take place in Hamburg, Germany, or, at the option of Philips, the jurisdiction of the Supplier’s entity having received the order; (iv) the language to be used in the arbitration proceedings shall be English; and (v) any award shall be applied by the arbitrators shall be the laws as determined under Section 23.9.

23.14 Unless agreed otherwise, this (English) version of the General Conditions of Purchase shall prevail over the German language version in case of contradictions.