

# TERMS AND CONDITIONS OF COMMERCIAL SALE OF vosla GmbH

## 1. OFFER, CONFIRMATION OR AGREEMENT

These terms and conditions of commercial sale of vosla (the "Terms and Conditions") apply to and form an integral part of all quotations and offers made by vosla GmbH ("vosla"), all acceptances, acknowledgements and confirmations by vosla of any orders by Buyer and any agreements ("Agreements") regarding the sale by vosla and purchase by Buyer of goods and services ("Products"), also for future business transactions, unless and to the extent vosla explicitly agrees to otherwise in writing.

Any terms and conditions set forth in any document or documents issued by Buyer either before or after issuance of any document by vosla setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by vosla, and any such terms shall be wholly inapplicable to any sale made by vosla to Buyer and shall not be binding in any way on vosla.

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in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by vosla at any time prior to the receipt by vosla of Buyer's acceptance thereof.

## 2. PRICING

Prices in any offer, confirmation or Agreement are in Euros, based on delivery Ex-Works (INCOTERMS latest version) vosla's manufacturing facility or other facility designated by vosla, unless agreed otherwise in writing between Buyer and vosla and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. vosla will add taxes, duties and similar levies to the sales price where vosla 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 vosla and Buyer in writing, vosla 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 vosla and Buyer in writing. All payments shall be made to the designated vosla 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 vosla.

(b) All deliveries of Products agreed to by vosla shall at all times be subject to credit approval of vosla. If, in vosla's judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, vosla may require full or partial payment in advance or other payment terms as a condition to delivery, and vosla may suspend, delay or cancel any credit, delivery or any other performance by vosla.

(c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, vosla shall have the right to refuse performance and/or delivery of any Products until payments are brought current and vosla may suspend, delay or cancel any credit, delivery or any other performance by vosla without any liability towards the Buyer. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

## 4. DELIVERY AND QUANTITIES

(a) Products shall be delivered Ex-Works (INCOTERMS latest version) as designated by vosla, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by vosla are approximate only, and vosla shall not be liable for, nor shall vosla be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. vosla agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

(b) Buyer will give vosla written notice of failure to deliver and thirty (30) days within which to cure. If vosla does not deliver within such thirty (30) day period, Buyer may cancel the affected and undelivered portions of the Agreement, provided that vosla is responsible for the delay. Buyer's claim to damages due to failure to deliver and delay as well as claims for damages in lieu of performance shall be governed by the provisions set out in Section 10.

(c) Risk of loss in or damage to the Products shall pass to Buyer upon vosla's delivery in accordance with the applicable INCOTERMS.

(d) If Buyer fails to take delivery of Products ordered, then vosla may deliver the Products in consignment at Buyer's cost.

(e) In the event vosla production is curtailed for any reason, vosla shall have the right to allocate its available production and Products, at its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be.

## 5. FORCE MAJEURE

vosla 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, however, this shall not apply in cases of gross negligence or intent; 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 vosla being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond vosla's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which vosla cannot reasonably be required to execute its obligations including force majeure and/or default by one of vosla'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 vosla to extend for a period of three (3) consecutive months), vosla shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

## 6. RETENTION OF TITLE

(a) Products shall remain vosla's property until the payment of all claims in respect of the business relationship with the Buyer, including any future claims. The retention of title shall also extend to any Products delivered by way of exchange.

(b) If the Products under retention of title should be processed, mixed or combined in the meaning of sections 947, 948 and 950 of the German Civil Code (BGB) with other items that do not belong to vosla, vosla shall have a right to co-ownership of the new item in the same ratio as that between the value of the Products under retention of title, including VAT, and the value of the other items processed or combined at the time of processing or combination. Buyer shall store the item on behalf of vosla free of charge.

(c) Until further notice Buyer is authorized to dispose of the Products under retention of title within the framework of its ordinary business operations. For this event Buyer hereby assigns to vosla his claims from a resale of the Products under retention of title (the resale price including VAT) - including the corresponding claims from bills of exchange and together with all ancillary claims. If Buyer should sell the Products under retention of title together with Products that do not belong to vosla at a total price the assignment shall only apply to the sum which vosla has charged Buyer for the Products under retention of title which have been sold.

(d) If Buyer's claims from the resale form part of the balance in a current account, Buyer hereby assigns to vosla his claims against his own customer in respect of the claims in the current account. The assignment shall apply to the resale price including VAT.

(e) Until further notice Buyer shall be entitled to collect the claims that have been assigned to vosla. Any assignment or pledging of such a claim shall only be permissible with vosla's written consent. If Buyer defaults on payment or fails to comply with his obligations in respect of the retention of title, Buyer shall, on vosla's request, provide the debtors with written notification of the assignment, supply vosla with all information, submit and send vosla the documents and transfer any bills of exchange. If necessary, Buyer must grant vosla access to the relevant documents.

(f) On the occurrence of the circumstances set out in Section 6 (e) sentence 3 Buyer must grant vosla access to the Products under retention of title which are still in his possession and send vosla an exact list of the Products. Buyer must separate these from other Products and return them to vosla after vosla has withdrawn from the contract.

(g) If the value of this security exceeds the sum of vosla's claim by more than 20%, vosla shall at vosla's option and upon Buyer's request release the security.

(h) Buyer must immediately notify vosla in writing if any third parties should seize the Products under retention of title or take possession of the claims assigned to vosla and must give vosla every possible support in the intervention.

(i) The costs for complying with the said duty to co-operate in enforcing all rights in respect of the retention of title and for all arrangements made for the maintenance and storage of the Products shall be borne by Buyer.

(j) In case of insolvency proceedings over Buyer's property vosla is entitled to withdraw from the contract provided the Products under retention of title have not been fully paid.

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

Subject to the provisions set forth herein, the sale by vosla of a Product implies the non-exclusive and non-transferable limited license to Buyer under any of vosla's and/or its affiliates' intellectual property rights ("vosla's IPR") in the territory to use and resell Products as sold by vosla 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 vosla 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 vosla in the territory.

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

## 8. WARRANTY

(a) vosla 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 vosla) shall be free from defects in material or workmanship and shall substantially conform to vosla's specifications for such Product, or such other specifications as vosla has agreed to in writing, as applicable. If the Product is defective and/or is not substantially conforming with the specifications, vosla shall have the duty, but also the right, to -at vosla's option- either replace or repair the Product free of charge within a reasonable period of time. The non-conforming or defective Products shall become vosla's property as soon as they have been replaced or credited. If replacement or repair fails, Buyer may cancel the Agreement or reduce the purchase price accordingly. Claims for damages shall be governed by Section 10.

(b) Buyer may ship Products returned under warranty to vosla's designated facility only in conformance with vosla then current return material authorization policy. Where a warranty claim is justified, vosla 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, vosla shall have no obligations under warranty if the alleged defect or non-conformance is found to have occurred as a result of environ-

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mental 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 or if the usability is impaired only slightly.

(d) vosla does not give any warranty of fitness for a particular purpose, merchantability, or non-infringement of intellectual property rights.

(e) Warranty claims are subject to limitation 12 months after delivery. This does not apply if the Act pursuant to §§ 438 para 1 no 2 (buildings and building matters), 479 para 1 (right of recourse) and 634a para 1 no 2 (building defects) of the German Civil Code prescribes longer periods.

(f) Exceeding claims or claims and rights of the Buyer in connection with defective or non-conforming Products other than regulated in this Section 8 shall be excluded.

## 9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

(a) vosla, 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 vosla 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) vosla shall have no obligation or liability to Buyer under Section 9 (a) (1) if Philips is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Buyer in such investigation, preparation, settlement and defense; (2) if the claim is made after a period of 1 year from the date of delivery of the Product.

(c) If any Product is, or in vosla's opinion is likely to become, the subject of a claim of infringement as referred to under 9 (a) above, vosla 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 10 of the Terms and Conditions, the foregoing states vosla'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.

## 10. LIMITATION OF LIABILITY

(a) Any claims for damages, compensation and/or reimbursement of expenses or costs of the Buyer (hereinafter referred to as "Claims for Damages"), regardless of the legal grounds and especially due to a breach of contract, warranty, delay, tort and/or infringement of duties arising in connection with the Agreement, shall be excluded. In case of failure of delivery or delay, any Claims for Damages shall be excluded even if Buyer had set a deadline that has expired.

(a) (b) The exclusions set forth above shall not apply in the event of mandatory liability, including but not limited to liability under the Product Liability Act ("Produkthaftungsgesetz"), in cases of gross negligence or intent, injury to life, body or health, or breach of contractual obligations material to the contract ("wesentliche Vertragspflichten"). However, Claims for Damages due to breach of material contractual obligations shall be limited to the foreseeable damage which is typical for the contracts, unless caused by gross negligence or intent or based on liability for injury of life, body or health. The foregoing provisions shall not imply any change in the burden of proof to Buyer's disadvantage.

(c) To the extent that Buyer is entitled to Claims for Damages according to this Section 10, any such Claim for Damages shall be subject to limitation of time pursuant to the limitation of time period set out in Section 8 (e). In the event of Claims for Damages based on the Product Liability Act, the statutory provisions governing the limitations of time period shall apply.

## 11. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by vosla and/or its affiliates is the confidential information of vosla 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.

## 12. 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, vosla 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 vosla may even terminate or cancel the Agreement, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, vosla shall inform Buyer immediately thereof and Buyer shall provide vosla with such document upon vosla's first written request; if an import license is required, Buyer shall inform vosla immediately thereof and Buyer shall provide vosla with such document as soon as it is available.

By accepting vosla'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.

## 13. DATA PROTECTION/SCHUFA

Personal data of Buyer will be treated in compliance with the effective provisions of the laws on data protection. vosla is the controller. vosla or any other service provider commissioned by vosla will store and process personal data, particularly address and order data, for the execution of the business transactions. Storage and processing will only take place insofar as it is necessary for the execution of the business transactions.

Buyer agrees to that vosla provides the SCHUFA Holding AG (Postfach 5640 Hannover) and other credit agencies with data to perform solvency check and credit assessment. vosla will use data Buyer has given in the course of initiation and execution of business transactions. Buyer may revoke its consent with effect for the future. Philips may provide to the SCHUFA information and data concerning Buyer's behavior that is not according to the contract. vosla will transfer such data only if such a transfer is admissible after balancing all relevant interests. The SCHUFA storages and transfers data for solvency checks and credit assessments within the EU: Buyer can require information from the SCHUFA about all stored data concerning Buyer.

## 14. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of vosla. 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 vosla 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. However, Buyer shall have the right to offset claims that are undisputed by vosla or which have been established through a non-appealable judgment.

## 15. GOVERNING LAW AND JURISDICTION

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of Germany. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and vosla 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 court of Plauen (Germany), provided that vosla 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 14 shall be construed or interpreted as a limitation on either vosla'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.

## 16. BREACH AND TERMINATION

Without prejudice to any rights or remedies vosla may have under the Agreement or at law, vosla may, by written notice to Buyer, cancel or 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.

## 17. 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 therefrom 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.