

# TERMS AND CONDITIONS OF COMMERCIAL SALE OF OLEDWORKS LLC AND OLEDWORKS GMBH

## 1. OFFER, CONFIRMATION OR AGREEMENT

These terms and conditions of commercial sale of OLEDWorks LLC, a New York, USA limited liability company or OLEDWorks GmbH, a German company (the "Terms and Conditions") apply to and form an integral part of all quotations and offers made by OLEDWorks LLC or OLEDWorks GmbH, as applicable based on the actual party from which Product is ordered (the applicable seller will be referred to as, "OLEDWorks"), all acceptances, acknowledgements and confirmations by OLEDWorks of any orders by Buyer and any agreements ("Agreements") regarding the sale by OLEDWorks and purchase by Buyer of goods and services ("Products"), also for future business transactions, unless and to the extent OLEDWorks 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 OLEDWorks setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by OLEDWorks, and any such terms shall be wholly inapplicable to any sale made by OLEDWorks to Buyer and shall not be binding in any way on OLEDWorks.

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in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by OLEDWorks at any time prior to the receipt by OLEDWorks of Buyer's acceptance thereof.

## 2. PRICING

Prices in any quotation, offer, confirmation or Agreement are in US Dollars, based on delivery Ex-Works OLEDWorks facility in Rochester, New York or OLEDWorks facility in Aachen, Germany (INCOTERMS latest version) OLEDWorks' manufacturing facility or other facility designated by OLEDWorks, unless agreed otherwise in writing between Buyer and OLEDWorks, provided that, notwithstanding EXW, OLEDWorks may include in the pricing a transportation fee to be paid by Buyer to OLEDWorks (the "Transportation Fee") in which case OLEDWorks shall pay the carrier the amount of the Transportation Fee. Prices do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products or any other expenses all of which taxes, duties or similar levies and other expenses shall be paid by and the responsibility of Buyer. OLEDWorks will add taxes, duties and similar levies to the sales price where OLEDWorks is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price. Without limitation to the foregoing, Buyer bears the cost and is responsible for payment of all transportation charges and any applicable import taxes and fees and any applicable customs duties and fees.

## 3. PAYMENT

(a) Unless agreed otherwise between OLEDWorks and Buyer in writing, OLEDWorks 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 OLEDWorks and Buyer in writing. All payments shall be made to the designated OLEDWorks 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 OLEDWorks.

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

(c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, OLEDWorks shall have the right to refuse performance and/or delivery of any Products until payments are brought current and OLEDWorks may suspend, delay or cancel any credit, delivery or any other performance by OLEDWorks 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 OLEDWorks, unless otherwise agreed in writing by OLEDWorks and Buyer. Delivery dates communicated or acknowledged by OLEDWorks are approximate only, and OLEDWorks shall not be liable for, nor shall OLEDWorks be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. OLEDWorks 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 OLEDWorks written notice of failure to deliver, to the extent applicable, and thirty (30) days within which to cure. If OLEDWorks does not deliver within such thirty (30) day period, Buyer may cancel the affected and undelivered portions of the Agreement, provided that OLEDWorks is responsible for the delay. Buyer's claim to damages due to failure to deliver and/or 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 OLEDWorks' delivery in accordance with the applicable INCOTERMS.

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

(e) In addition to rights under Section 5 below, in the event OLEDWorks' production is curtailed for any reason, OLEDWorks 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, without being responsible or liable to Buyer for any damage resulting therefrom. OLEDWorks will notify Buyer of any such event without delay. Buyer's obligation for payment shall be reduced in accordance with the reduced delivery.

(f) In the event OLEDWorks elects, in its discretion, to cease manufacture and/or sale of a Product(s), it shall provide no less than nine months' prior written notice to Buyer. OLEDWorks shall have no liability to Buyer in the event of any such cessation to manufacture or sell such Product(s).

## 5. FORCE MAJEURE

OLEDWorks shall not be liable for any failure or delay in performing under this Agreement, and shall not be in default hereunder, resulting, directly or indirectly, from acts beyond the reasonable control of OLEDWorks, including, without limitation, acts of God, strikes,

walkouts, freight embargo, riots, civil disturbance, acts of war, acts of terrorism, laws, regulations, or other government proclamations, ordinances, or acts, quarantine, epidemics, power failures, earthquakes, floods, fires, explosions, or other catastrophes, or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing ("Force Majeure").

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 OLEDWorks to extend for a period of three (3) consecutive months), OLEDWorks 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 OLEDWorks' 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) With respect to sales by OLEDWorks GmbH, if applicable, if the Products under retention of title should be combined in the meaning of sections 947 of the German Civil Code (BGB) with other items that do not belong to OLEDWorks GmbH, OLEDWorks GmbH 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 OLEDWorks GmbH 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 OLEDWorks its 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 OLEDWorks at a total price the assignment shall only apply to the sum which OLEDWorks 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 OLEDWorks its claims against its 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 OLEDWorks. Any assignment or pledging of such a claim shall only be permissible with OLEDWorks' written consent. If Buyer defaults on payment or fails to comply with his obligations in respect of the retention of title, Buyer shall, on OLEDWorks' request, provide the debtors with written notification of the assignment, supply OLEDWorks with all information, submit and send OLEDWorks the documents and transfer any bills of exchange. If necessary, Buyer must grant OLEDWorks access to the relevant documents.

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

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

(h) Buyer must immediately notify OLEDWorks in writing if any third parties should seize the Products under retention of title or take possession of the claims assigned to OLEDWorks and must give OLEDWorks 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 OLEDWorks 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 OLEDWorks of any goods implies the non-exclusive, non-sublicensable and non-transferable limited license to Buyer under any of OLEDWorks' and/or its affiliates' intellectual property rights ("OLEDWorks' IPR") used in the Products solely to use the Products as intended and to resell the Products (without modification) as sold by OLEDWorks to Buyer (without right to reproduce, modify or create derivative works).

To the extent that software and/or documentation is embedded in or delivered with any goods sold by OLEDWorks to Buyer, the sale of such goods 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 OLEDWorks' IPR used in the software to use such software and/or documentation in conjunction with and as embedded in or delivered with the goods as supplied by OLEDWorks in the territory to Buyer.

Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as conferring any right, license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any OLEDWorks' IPR or intellectual property rights of any third party other than explicitly granted under these Terms and Conditions

Unless otherwise agreed by OLEDWorks in writing, in its discretion, to the extent there are any drawings or specifications prepared by or for OLEDWorks in connection with Products, OLEDWorks shall own such drawings and specifications and all intellectual property rights therein and any inventions made in the course of design or manufacture of the Product.

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

If and to the extent copyright in the software is owned by third parties, the license terms of these third parties shall apply instead of the present Terms and Conditions to such third party software. OLEDWorks will notify Buyer accordingly and will provide them upon request by Buyer.

### 8. DEFECTS / NON-COMPLIANCE

(a) OLEDWorks warrants that under normal use in accordance with the applicable user manual and applicable OLEDWorks application and/or use restrictions the Products (excluding any software that is not embedded in or delivered with any goods by OLEDWorks or software which is subject to copyright owned by a third party), and provided that the Product has not been modified, shall, at the time of delivery, be free from defects in material or workmanship and shall substantially conform to OLEDWorks' specifications for such Product, or such other specifications as OLEDWorks has agreed to in writing, as applicable. If the Product is defective and/or is not substantially conforming with the specifications, OLEDWorks shall have the duty, but also the right, to - at OLEDWorks' option - to either replace or repair the Product free of charge within a reasonable period of time. The non-conforming or defective Products shall become OLEDWorks' property as soon as they have been replaced or credited. If replacement or repair fails after a reasonable period of time following OLEDWorks attempt to repair or replace, Buyer may cancel the Agreement or reduce the purchase price accordingly. No employee or agent of OLEDWorks is authorized to make any warranty other than that which is set forth herein.

(b) Claims for damages shall be governed by Section 10.

(c) Buyer may ship Products returned under warranty to OLEDWorks' designated facility only in conformance with OLEDWorks' then current return material authorization policy. Where a warranty claim is justified (in accordance with and for a breach of warranty under these Terms and Conditions), OLEDWorks 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.

(d) Notwithstanding the foregoing, OLEDWorks shall have no obligations under any warranty in these Terms and Conditions 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 applicable 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 or if the Product was purchased by other than for manufacturing, research and development or evaluation.

(e) Subject to the applicable mandatory law, the express warranty granted above shall extend directly to Buyer only and not to Buyer's customers, agents or representatives. OLEDWorks does not give any warranty of fitness for a particular purpose, merchantability, or non-infringement of intellectual property rights.

(f) Warranty claims and rights according to Section 8 (a) are subject to a statute of limitations 12 months after delivery (and any claim not made in writing to OLEDWorks within such 12 month period shall be null and void and not subject to warranty).

(g) 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) Subject to the terms of this Agreement, including Section 9(b) below, OLEDWorks, 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 OLEDWorks under an Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret at the time of delivery to Buyer; 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) OLEDWorks shall have no obligation or liability to Buyer under Section 9 (a)

(1) if OLEDWorks 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 2 years from the date of delivery to Buyer of the Product;

(3) to the extent that any such claim arises from: (i) modification of the Product if the claim of infringement would have been avoided by use of the unmodified Product; or (ii) design, specifications or instructions furnished by Buyer; or (iii) combination of the Product with another good not approved in writing by OLEDWorks in advance if the claim of infringement would have been avoided by use of the Product without such combination.

(4) to the extent the claim is based directly or indirectly upon the quantity or value of products manufactured by means of the Product or upon the frequency of use or the amount of use of the Product irrespective of whether such claim alleges that the Product as such, or its use, infringes or contributes to the infringement of any intellectual property rights of the claimant;

(5) for unauthorized use or distribution of the Product or use beyond the specifications, application and/or use restrictions of the Product or resulting from the negligence of the Buyer or user;

(6) to the extent any such claim arises from Buyer's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Product after OLEDWorks' notice to Buyer that Buyer should cease any such activity, provided such notice shall only be

(7) given if the Product is, or in OLEDWorks' opinion is likely to become, the subject of such a claim of infringement;

(8) to the extent the claim is based on any prototypes, or Open Source Software, or software provided by Buyer or any of its designees to OLEDWorks and/or its affiliates;

(9) to the extent any such claim arises from any infringement or alleged infringement of third party's intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies,

(10) for infringement of any third party's intellectual property rights covering

the manufacture, testing or application of any assembly, circuit, combination, method or process in which the Product may have been used, or

(11) for infringement of any third party's intellectual property rights with respect to which OLEDWorks or any of its affiliates has informed Buyer, or has published (in a datasheet or other specifications concerning the Product or elsewhere) a statement, that a separate license has to be obtained.

For such claims of infringements referred to in this Section 9(b), Buyer shall indemnify OLEDWorks and its affiliates against and hold them harmless from any damages or costs arising from or connected with such claims and shall reimburse all costs incurred by OLEDWorks and its affiliates in defending any claim, demand, suit or proceeding for such infringement, provided OLEDWorks gives Buyer prompt notice in writing of any such suit or proceeding for infringement.

(c) If any Product is, or in OLEDWorks' opinion is likely to become, the subject of a claim of infringement as referred to under 9 (a) above or if OLEDWorks receives from a third party claiming infringement of third party IPR in relation to any of the Products, OLEDWorks shall have the right, at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) provide replacement with a non-infringing product, or (iii) modify the Product in such a way as to make the modified Product non-infringing. If any such remedies fail, Buyer in its discretion may cancel the Agreement or reduce the purchase price accordingly.

(d) Claims and rights according to Section 9 (c) are subject to a statute of limitations according to Section 8 (f).

(e) Subject to the exclusions and limitations set forth in Section 10 of the Terms and Conditions, the foregoing states OLEDWorks' 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: DISCLAIMER

(a) Any claims for damages, compensation and/or reimbursement of expenses or costs of the Buyer (hereinafter referred to as "Claims for Damages"), regard-less 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. WITHOUT LIMITATION, OLEDWORKS SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

(b) With respect to Product sold by OLEDWorks GmbH, 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").

(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 statute of limitation of time pursuant to the limitation of time period set out in Section 8 (f), except in cases of gross negligence or injury to life, body or health. In the event of Claims for Damages based on the Product Liability Act, the statutory provisions governing the limitations of time period shall apply.

(d) EXCEPT AS SET FORTH HEREIN, OLEDWORKS MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER BY COURSE OF DEALING OR TRADE USAGE OR OTHERWISE, INCLUDING WITHOUT LIMITATION AS TO FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY.

### 11. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by OLEDWorks and/or its affiliates is the confidential information of OLEDWorks 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 in writing and in conformance with the purchase transaction contemplated herein.

### 12. EXPORT/IMPORT CONTROLS

Buyer understands that certain transactions of OLEDWorks are subject to export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of OLEDWorks to export, re-export or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, OLEDWorks may suspend its obligations and the Buyer's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, OLEDWorks may even terminate the relevant order in all cases without incurring any liability towards the Buyer or end-user. Buyer warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Buyer. Buyer

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accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Buyer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Buyer shall indemnify OLEDWorks against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Buyer's or its customers' breach or non-compliance with this article. Buyer acknowledges that the obligations contained in this Agreement shall survive the termination of any agreement of other arrangement under which the products, software or technology was provided to Buyer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between Buyer and OLEDWorks, Buyer understands that the terms of this Agreement shall control and be binding upon Buyer.

### 13. ANTI BRIBERY

Buyer agrees that it now and in future shall comply with national law on prevention of bribery, as well as any other law transforming from ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (including the US Foreign Corrupt Practices Act). In general, the law makes it illegal to bribe or make a corrupt payment to an Official for the purpose of obtaining or retaining business, directing business to any person, or securing any improper advantage.

Buyer's failure to comply with any provision of this section is grounds for immediate termination of any Agreement by OLEDWorks (or its respective affiliate(s)), without OLEDWorks' incurring any liability towards Buyer. In the event of such termination, (i) OLEDWorks shall be under no obligation to supply any Product to Buyer, (ii) Buyer shall be responsible for and indemnify OLEDWorks for any damages, claims, penalties or other losses (including attorneys' fees) that may be asserted against or incurred by OLEDWorks as a result of Buyer's breach of this section; and (iii) OLEDWorks shall be entitled to any other remedies available at law or in equity. The terms and conditions of this section shall survive any expiration or termination of this Agreement.

OLEDWorks will only do business with those companies that respect the law and adhere to ethical standards and principles. Should OLEDWorks receive any information to the contrary, OLEDWorks will inform and Buyer agrees to cooperate and provide whatever information is necessary to allow OLEDWorks to decide whether there is any basis to any allegation received and whether the Agreement should continue. Such information includes, but is not limited to, books, records, documents, or other files.

### 14. DATA PROTECTION

Personal data of Buyer will be treated in compliance with the effective provisions of the laws on data protection including GDPR to the extent applicable. OLEDWorks is the controller. OLEDWorks or any other service provider commissioned by OLEDWorks 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. To the extent applicable to Buyer: Buyer agrees to that OLEDWorks provides the SCHUFA Holding AG (Postfach 5640 Hannover) and other credit agencies with data to perform solvency check and credit assessment. OLEDWorks 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. OLEDWorks may provide to the SCHUFA information and data concerning Buyer's behavior that is not according to the contract. OLEDWorks will transfer such data only if such a transfer is admissible after balancing all relevant interests; The SCHUFA stores 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.

### 15. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of OLEDWorks in its discretion. 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 OLEDWorks 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 OLEDWorks or which have been established through a non-appealable judgment. OLEDWorks in its discretion may assign all or a portion of its rights and obligations hereunder in its discretion.

### 16. GOVERNING LAW AND JURISDICTION

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of the State of New York, USA, without reference to conflicts of law principles. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and OLEDWorks 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 State or Federal courts of Monroe County, New York (USA) and Buyer hereby expressly and irrevocably consents and submits to the personal jurisdiction of all such courts and waives any claim that such forum is inconvenient, provided that OLEDWorks 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 16 shall be construed or interpreted as a limitation on either OLEDWorks' 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.

### 17. BREACH AND TERMINATION

Without prejudice to any rights or remedies OLEDWorks may have under the Agreement or at law, OLEDWorks 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 (c) the control or ownership of Buyer changes.

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.

### 18. 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) These Terms and Conditions, together with any additional terms and conditions agreed to or accepted by Buyer (including any Agreement), are the sole terms and conditions relating to the subject matter hereof, and supersede all other communications and agreements.

(c) 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.

(d) Any notice required or permitted hereunder shall be in writing and deemed given (i) three days after being sent by regular mail, or (ii) one business day after being sent by overnight courier, in any case if sent to Buyer at the last address on record with OLEDWorks, and if to OLEDWorks LLC (to the extent it is the seller), to 1645 Lyell Avenue, Suite 140, Rochester, New York, USA 14606, attn.: Bernadette Thompson, or if to OLEDWorks GmbH (to the extent it is the seller), to Philippsstrasse 8, 52068, Aachen, Germany, attn: Wolfgang Goergen.