



1. This is a Defense & Indemnification Agreement [formerly known as the Indemnification And Hold Harmless Agreement] (“Agreement”) by and between Feit Electric Company, Inc. (“Feit Electric”) and a manufacturer and/or supplier (collectively, “Vendor”) for the purchase of goods by Feit Electric from Vendor.
2. This Agreement and the terms and conditions set forth herein are made a part of and incorporated by reference in: (a) any manufacturing and/or supply Agreement by and between Feit Electric and a manufacturer and/or supplier; and, (b) any and all purchase orders issued by Feit Electric and accepted by a manufacturer and/or supplier.
3. This Agreement and the terms and conditions set forth herein are a material inducement for Feit Electric to enter into the applicable business relationship and transaction(s) with Vendor, Feit Electric has relied on this Agreement and the terms and conditions set forth herein to enter into the applicable business relationship and transaction(s) with Vendor, and Feit Electric will continue to rely on this Agreement and the terms and conditions set forth herein in its dealings with Vendor.
4. This Agreement and the terms and conditions set forth herein are an integral part of the consideration for the purchase goods from Supplier. Vendor acknowledges and agrees that: the amounts paid by Feit Electric to Vendor for goods comprises consideration for not only the goods, but also for this Agreement and the terms and conditions set forth herein; and, the amounts paid by Feit Electric for the goods and this Agreement and the terms and conditions set forth herein is fair, reasonable, adequate, and sufficient.
5. Vendor represents and warrants that the goods Vendor supplies to Feit Electric (a) do not infringe any third party patent or misappropriate any third party confidential or trade secret information (“warranty of non-infringement”); (b) are free from any design or manufacturing defect; (c) are merchantable; (d) meet or exceed performance specifications promoted by Vendor and/or specified by Feit Electric; and, (e) are fit for the intended purpose.
6. Vendor shall defend, indemnify, and hold harmless, at Vendor's own cost and expense, Feit Electric and its affiliates, distributors, program sponsors, customers, and end users as well as the officers, directors, agents, and employees of the foregoing, and the successors and assigns of each of the foregoing (individually and/or collectively the “Indemnitees”) from and against any claim, suits, investigation, causes of action, judgments, damages, losses, penalties, costs, disbursements, expenses and attorneys' fees including suits, losses, any claim, causes of action, judgments, damages, penalties, costs, disbursements, expenses and attorneys' fees which may be asserted, alleged, demanded, claimed, recovered or otherwise incurred or sustained by any of the Indemnitees as a result of or in connection with any of the Feit Electric's Indemnitees' importation, use, purchase, distribution, promotion, offer for sale, or sale of goods purchased from Vendor, including without limitation, suits, losses, any claim, judgments, damages, penalties, costs, disbursements, expenses including, alleging: (a) personal injury; (b) death; (c) property damage; (d) infringement of any third party's patent, copyright, trade secrets, trademark, trade dress, or other intellectual property right; (e) product liability; and/or, (f) or violations of any federal, state or local laws, rules, ordinances, or regulations including but not limited to those concerning product safety, labeling, packaging, weight, quality, and/or consumer protection (individually and/or collectively “Claim” or “any Claim”).
7. Exclusions.
 - a. Vendor shall have no obligation under this Agreement to the extent a Claim is for trademark infringement for use of a trademark selected by Feit Electric and/or its customer.
 - b. Vendor shall have no obligation under this Agreement to the extent a Claim is for patent infringement arising out of Vendor's manufacture of goods in accordance with the exact specifications other than performance requirements provided by Feit Electric to Vendor unless infringement could have been avoided by the use of a non-infringing method or process, or part or component, in the manufacture of the goods

c. Vendor shall have no obligation under this Agreement to the extent a Claim is for design defect arising from the manufacture of goods in accordance with the exact specifications provided by Feit Electric to Vendor.

8. Vendor, at its sole cost and expense, even if any such allegation of liability is groundless, false, and/or fraudulent, shall assume the defense of any Claim upon written notice from the applicable Indemnitees in accordance with the provisions set forth below:

a. Feit Electric and any of the applicable Indemnitees shall give prompt written notice of any Claim to Vendor. The failure of Feit Electric and any of the applicable Indemnitees to promptly give written notice of any Claim to Vendor shall not excuse Vendor from any of its obligations under this Agreement except to the extent that Vendor can demonstrate an actual loss or prejudice as a result of such failure.

b. Feit Electric and any of the applicable Indemnitees shall, subject to the terms and conditions of this Agreement, tender the defense and/or settlement of any Claim to Vendor.

c. Vendor shall take all steps necessary in the defense and/or settlement of any Claim.

d. Vendor shall select counsel reasonably acceptable to Feit Electric and the applicable Indemnitees to conduct defense and/or settlement of any Claim.

e. Vendor shall keep Feit Electric and the applicable Indemnitees fully informed concerning the defense and/or settlement of any Claim,

f. Vendor shall reasonably consider and address Feit Electric and/or Feit Electric's counsel input concerning the defense and/or settlement of any Claim.

g. To the extent that any action by Vendor or its counsel in the conduct of the defense and/or settlement of any Claim will affect any of the applicable Indemnitees, such action shall require the prior written consent of Feit Electric and the applicable Indemnitees.

h. Vendor and its counsel shall provide copies of any substantive communications, documents, submissions, filings, or the like concerning the defense and/or settlement of any Claim to Feit Electric and the applicable Indemnitees.

i. Vendor shall not consent to a settlement of, or entry of any judgment arising from, any Claim without the prior written consent of the applicable Indemnitees: (i) if such settlement or judgment will impose any obligation, liability or restriction on Feit Electric or the applicable Indemnitees; or, (ii) if such settlement or judgment will have any effect on the right to import, use, purchase, distribute, promote, offer for sale, or sell any goods by Feit Electric or the applicable Indemnitees.

j. Feit Electric and the applicable Indemnitees shall reasonably cooperate at Vendor's cost and expense in the defense and/or settlement of any Claim.

k. Feit Electric and the applicable Indemnitees shall be entitled to participate in the defense and/or settlement of any Claim with its own counsel at their own expense.

9. Feit Electric and/or the applicable Indemnitees may take over the defense and/or settlement of any Claim at any time if in the sole and absolute discretion of Feit Electric and/or the applicable Indemnitees Vendor has not competently and/or adequately defended any Claim. In the event that Feit Electric and/or the applicable Indemnitees intend to take over the defense and/or settlement of any Claim in accordance with this Section, they shall give written notice to Vendor. In the event that Feit Electric and/or the applicable Indemnitees take over the defense and/or settlement of any Claim in accordance with this Section, Vendor's obligation to indemnify and hold harmless Feit Electric and the applicable Indemnitees shall continue as provided for in this Agreement and

Vendor shall pay and/or reimburse Feit Electric and the applicable Indemnitees for all costs and expenses incurred in the conduct of the defense and/or settlement of any Claim.

10. Vendor's agreement to defend, indemnify and hold harmless Indemnitees under the terms above is: (a) independent of and in addition to Vendor's agreement to procure insurance as may be required; and (b) independent of and in addition to all other rights and recoveries available to Indemnitees, whether in law or in equity. Vendor's insurer's position regarding insurance coverage for Indemnitees, as an additional insured, does not in any way modify or limit Vendor's agreement or obligation to defend, indemnify and hold harmless Indemnitees as required in the terms above.

11. For a term of one (1) year from the issuance of a purchase order by Feit Electric to Vendor which Vendor accepts, Vendor and its Affiliates shall not directly or indirectly commence an action, lawsuit, and/or investigation against Feit Electric, its contract manufacturers, and/or any Indemnitee alleging that any Feit Electric product, a component of any Feit Electric product, and/or the use of any Feit Electric product or component thereof infringes a patent owned and/or controlled by Vendor or an affiliate of Vendor. The term "Affiliate" or "Affiliates" means any entity which controls Vendor, is controlled by Vendor or is under common control with Vendor.

12. Any Indemnitee not a party to this Agreement shall be considered a third party beneficiary of this Agreement and the terms and conditions herein.

13. Vendor acknowledges that it and/or its legal counsel fully understand this Agreement even though it is in the English language and the English language may not be familiar to them. Vendor acknowledges that it had an opportunity to have this Agreement translated into a more familiar language and for its counsel to review this Agreement. Vendor acknowledges that it is fully aware of the contents of this Agreement and the legal effect of this Agreement.

14. Under this Agreement, if one party is required to deliver something to the other, or give notice, such delivery and such notice shall be by courier (such as Federal Express, DHL, UPS or the like) addressed to the principal office of the other party. Notice shall be deemed given on the day of delivery or the day of refusal of delivery.

15. The title, headings, and subheadings in this Agreement are included solely for convenience of reference and will not be considered part of, or affect the interpretation of, this Agreement.

16. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral and written term sheets, understandings, or agreements between the parties relating to the subject matter hereof. In the event of any conflict between the text of this Agreement and the text of any other agreement between the parties, the text of this Agreement shall govern and control.

17. This Agreement may not be amended or modified except in a writing signed by both an officer of Feit Electric and an officer of Vendor referencing an intent to amend this Agreement.

18. In the event any one or more of the provisions contained in this Agreement should for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the remaining provisions contained herein shall be enforced to the full extent permitted by law.

19. This Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America without regard to principles of conflict of law. The United Nations Convention on the International Sale of Products shall not apply.

20. If any dispute arises under or in connection with this Agreement, the parties shall make a good faith effort to resolve the dispute before taking any action. The parties shall meet to discuss the dispute no later than ten (10) days after either party gives written notice to the other party that such a dispute exists. Such meeting may be held telephonically if travel is impractical for either party. At such meeting, a duly authorized representative of each

party having authority to resolve the dispute shall be in attendance. No action, suit, arbitration or other proceeding may be commenced before the parties have met pursuant to this Section.

21. Any dispute arising under or in connection with this Agreement that is not resolved by the meeting prescribed in Section 20 above, shall be finally settled by arbitration in accordance with the arbitration rules of the American Arbitration Association modified as follows: the arbitration shall be expedited; no discovery of any kind shall be conducted in the arbitration; no direct examination or cross examination of witnesses shall be conducted in the arbitration; the arbitration proceeding shall take place in Los Angeles, California, United States of America; the arbitration shall be conducted in the English language; the arbitration shall be before a single arbitrator; the arbitration shall be decided based on the written submissions of the parties; the arbitrator shall be required to provide the parties with a brief well-reasoned written statement in support of any decision and/or award; the parties consent to the jurisdiction of the arbitrator; any decision and/or award by the arbitrator shall be final and binding upon the parties; neither party shall call upon a court of law or any other authority in an attempt to invalidate, amend, or review the arbitral award; and, either party may call upon a court of law or any other applicable authority to enforce any decision and/or award by the arbitrator.

22. In any action and/or arbitration by Feit Electric to enforce the terms of this Agreement, if Feit Electric prevails, then Feit Electric shall be entitled to all costs and expenses of the action and/or arbitration, including but not limited to attorneys' fees.

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