



## Terms and Conditions of Sale

These standard terms and conditions of sale ("Terms and Conditions") apply to any and all orders placed by purchaser ("Purchaser") for purchases of products or services (together, "Products") from and after February 1, 2016 from Philips Lighting North America Corporation and its affiliates ("Manufacturer"), whether or not such purchase is subject to a signed purchase order, distribution or other agreement between Manufacturer and Purchaser. Ordering Products from Manufacturer constitutes acceptance of the terms set forth herein, as such terms may have been updated through the date of such order. Any different, or additional terms in any purchase order, blanket instructions or other writing from Purchaser shall be deemed a material alteration hereof and are hereby expressly objected to and rejected and shall be of no force or effect. Commencement of performance or shipment shall not be construed as acceptance of any of Purchaser's terms and conditions which are different from or in addition to those contained in the Agreement. Course of performance or usage of trade shall not be applied to modify these Terms and Conditions.

### ORDERS; CHANGES AND CANCELLATIONS

All orders must be placed in writing and delivered directly to Manufacturer from the entity that will be liable for the payment of the order. Verbal orders or orders through a third party will not be accepted.

No order is final as to Manufacturer until accepted by Manufacturer by written acknowledgement. All orders that are accepted by Manufacturer are subject to these Terms and Conditions. After acceptance, requests to cancel or change orders must be submitted in writing to Manufacturer. All requests are reviewed for approval before processing and are subject to any and all cost or expense incurred by Manufacturer from such cancellation or change including, without limitation, costs for work performed and/or materials purchased by Manufacturer for Products. Hold orders may be accepted for informational purposes only. Procurement and production process will not be initiated and delivery commitments will not be provided without firm release dates.

### PRICES

All prices represent those in effect at the time of quotation and are subject to change without notice. All prices are as stated in Manufacturer's quote and specifically override any prices referenced in Purchaser's purchase order. Unless prices are quoted as "firm" by an officer of Manufacturer, Manufacturer reserves the right to invoice prices in effect at the date of shipment, regardless of any prior quote and regardless of whether notice was received by Purchaser. All prices and other terms are subject to correction for typographical or clerical errors.

### SALES MATERIALS; SPECIFICATIONS

Any catalog, specification or price sheet or other similar documentation prepared by Manufacturer is strictly for the convenience of the user and shall not be deemed as an offer to sell. Manufacturer believes such documentation is complete and accurate at time of printing, but does not warrant that such documentation is error free. Manufacturer will not accept responsibility for any damages including labor charge backs in connection with errors of measurements, descriptions, application recommendations, etc.

Products will be shipped in accordance with the standard styles and sizes as described in Manufacturer's catalogs or, for special or made-to-order Products, in accordance with Manufacturer's drawings and specifications sheets. In the event of a conflict between a customer's written order and a Manufacturer drawing or specification sheet marked "approved" or the like, the Manufacturer drawing or specification sheet shall prevail. Manufacturer reserves the right to change details of design, materials and finish at any time without written notice.

#### Updated June 2016

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Tel. 855-486-2216



Philips Lighting Canada Ltd.  
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## **TERMS OF PAYMENT**

Unless otherwise stated in Manufacturer's invoice or agreed to in writing by Manufacturer, terms of payment for orders shipped to destinations in the United States shall be as follows: (i) for drop ship orders, payment is due by the 10th day of the month following invoicing to earn the 1% discount, the net is due on the 25th of the month following invoicing and (ii) for orders into stock, payment is due by the 10th day of the 2nd month following invoicing to earn the 1% discount, the net is due on the 25th of the 2nd month following invoicing. The terms of payment are subject to review of Purchaser's credit by Manufacturer. Manufacturer shall have the right, at any time and from time to time, to require cash payments in advance or a letter of credit or other assurance of payment satisfactory to Manufacturer as a condition to acceptance of any order or shipment of any Product. Unless otherwise agreed to by Manufacturer, payment shall be by check to be drawn on Purchaser's corporate account, by wire transfer to Manufacturer's account at a commercial bank designated by Manufacturer, or by Manufacturer's draw upon a letter of credit satisfactory in form and substance to Manufacturer.

The requirement of a letter of credit is standard for shipments outside the United States for special products, and for F.O.B. factory orders. All payments by Purchaser shall be made in United States Dollars and shall be paid in full, without set-off, deduction or counterclaim.

## **TAXES AND GOVERNMENTAL CHARGES**

Prices do not include any taxes or other governmental fees, charges or assessments, including, without limitation, value-added, sales, use or privileges taxes, required governmental withholdings or excise or similar taxes levied by any government, now or hereafter enacted. In Manufacturer's discretion, any such taxes, charges or withholdings may be added to the price for any Products or may be billed separately. Purchaser will pay all such taxes and charges, on or before their due dates. In the event Manufacturer is required at any time to pay any such tax or charge, Purchaser will reimburse Manufacturer promptly on demand.

## **LATE CHARGES; COSTS**

If Purchaser fails to pay in full without any set off or deduction any amount due to Manufacturer promptly when due, Manufacturer may recover, in addition to the payment due, interest thereon at a rate equal to the lesser of 1-1/2% per month and the maximum rate of interest allowable under applicable law and Purchaser shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Manufacturer in collecting or attempting to collect any and all overdue accounts. If Purchaser fails to pay any amount when due, in addition to any other rights or remedies available to Manufacturer at law or in equity, Manufacturer may discontinue the performance of services, discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Purchaser by Manufacturer under any agreement with Purchaser.

## **SECURITY INTEREST**

Purchaser hereby grants to Manufacturer a purchase money security interest in the products until all payments have been made. Purchaser shall sign any financing statements or other documents necessary to perfect Manufacturer's security interests in the products. Where permitted by applicable law, Purchaser's signature on the quotation or on a purchase order issued as a result of the quotation gives Manufacturer the right to sign on Purchaser's behalf and file any financing statement or other documents to perfect Manufacturer's security interest in the product.

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## **PACKAGING AND HANDLING**

Manufacturer shall determine the method of packaging for all Products. If Purchaser requires special packaging or handling, such request must be made in writing and charges for special packaging, handling, and delivery shall be added to the price of the Products. Unless specifically agreed to in writing, Manufacturer will not be responsible for the payment of any penalties or special handling charges relating to Manufacturer's failure to comply with a customer's special requirement for order processing, handling, packaging, shipping or invoicing.

## **SHIPMENT, DELIVERY AND TITLE**

Products will be tendered and shipped FOB (Incoterms 2010) Manufacturer's plant or warehouse and title to and risk of loss of the Product shall pass to Purchaser at such point. Purchaser shall obtain and pay for insurance covering such risks at such destination. Manufacturer will select the carrier and routing and ship Products freight prepaid and added to the price of the Products. Manufacturer may, in its discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete order. Upon request, Manufacturer will drop-ship individual orders of \$1,000 or more to any one destination within the continental United States. Manufacturer may refuse to make direct shipments outside of Purchaser's regular service area. Orders that are for less than \$1,000 in total are subject to a \$100 shipping and handling fee. Manufacturer may, at its discretion, offer freight allowances for orders in excess of certain set prices and/or for orders shipped outside the continental United States. Purchaser shall contact Manufacturer for the applicable terms and conditions of any freight allowances offered by Manufacturer. Where Manufacturer provides such an allowance to Purchaser, Manufacturer will use its own discretion in routing the shipment. If a more expensive means of transportation or other special delivery requirements are requested by Purchaser, Purchaser assumes and shall pay all additional costs.

Delivery dates of all shipments are estimated and are not guaranteed. The shipment date mentioned on Manufacturer's quote or order acknowledgement, if any, is Manufacturer's approximation of a shipment date, and is not a fixed or guaranteed shipment date. Manufacturer assumes no liability in connection with any delay in delivery. Postponement of deliveries at Purchaser's request, if for a period of more than ten (10) days, will not be permitted unless prior approval is given by an authorized officer of Manufacturer. Any claims for shortages, losses, or damages sustained in transit shall be made by Purchaser with the carrier and must be documented on delivery receipt. Upon request, Manufacturer will provide evidence of delivery of Products to the carrier, but reserves the right to charge a reasonable fee for all proof of delivery requests.

## **STORAGE**

Purchaser shall pay any detention, storage, handling or auxiliary charges assessed by carriers or warehousemen resulting from Purchaser's requirements for special service or Purchaser's failure to accept delivery in a timely manner.

## **PRODUCT ACCEPTANCE**

All Products delivered hereunder shall be deemed accepted by Purchaser as conforming to this Agreement, and Purchaser shall have no right to revoke any acceptance, unless written notice of the claimed nonconformity is received by Manufacturer within sixty (60) days of delivery thereof. Notwithstanding the foregoing, any use of a product by Purchaser, its agents, employees, contractors or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that product by Purchaser.

## **FORCE MAJEURE**

Manufacturer shall have no liability or obligation in connection with any failure to manufacture or deliver due to causes beyond Manufacturer's reasonable control including but not limited to strikes, lockouts, fires, riots, wars, acts of God, inability to obtain materials, components or supplies, failure or breakdown of machinery, production scheduling delays, government regulations or other conditions.

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## **PRODUCT RETURNS**

In the event it is necessary to return Products to Manufacturer, Purchaser must follow the procedure outlined in these Terms and Conditions. For Purchaser's who received their Products from an authorized distributor of Manufacturer, the procedure outlined below should be directed to, and the term "Manufacturer" shall mean, such distributor. To obtain approval to return Products to Manufacturer, Purchasers must contact Manufacturer's Customer Service staff at (800) 215-1068 (Fall River); (800) 234-1890 (Tupelo); (800) 334-2212 (Somerset) during normal business hours. If a return is approved, a packet will be prepared and mailed to the Purchaser within two standard business days containing (i) a Return Authorization ("RA") number; and (ii) two copies of the authorized RA form (one for the Purchaser's records and one to be included with the return shipment).

NO PRODUCT RETURNS WILL BE ACCEPTED BY MANUFACTURER IF NOT ACCOMPANIED BY A VALID RA NUMBER. Product returned without a RA number will either be refused or returned to Purchaser at Purchaser's expense. Manufacturer is not liable for loss or damage to unauthorized product returns. Once issued, RA numbers are valid for 30 days. Any returns received after 30 days of the issuance of an RA will be refused. Purchaser is responsible for all return freight charges, including taxes, customs and duties if applicable. All product returned for credit must be new, undamaged, and in factory sealed packaging. Product may not be returned if it is non-standard, made-to-order, or manufactured to Purchaser's specific design or specification (including units with non-standard components or accessories), or is outdated or phase-out stock product. Any product returned with marked box, damaged box, missing components, (e.g. cables, manuals, etc.), or other damage not caused by Manufacturer will be assessed a higher restocking fee to cover the cost of replacements.

All Products returned are subject to inspection. Un-saleable and damaged merchandise may be credited at salvage value or less costs of repairs. Credit can be issued only on Products re-saleable as new. Manufacturer may at its option issue credit at prices prevailing at time of shipment, or time of return, whichever is lower, less the any applicable restocking or other charges.

Returns authorized by Manufacturer, other than return of Defective Products which are subject to the terms of Manufacturer's applicable Limited Warranty, will be subject to a restocking fee and Purchaser will pay all transportation costs associated with the return, including taxes, customs and duties, if applicable. Product returned in original condition will be assessed up to a 20% restocking fee. Requests to return non-defective stocking merchandise can be made once per calendar year without a re-stocking fee.

## **LIMITED WARRANTY**

Manufacturer's limited warranty for the Products is posted on Manufacturer's website at <http://www.usa.lighting.philips.com/home> under the "Support" tab (as applicable, the "Product Warranty"). The terms of the Product Warranty are hereby herein incorporated by reference. THE WARRANTIES SET FORTH HEREIN AND IN THE PRODUCT WARRANTY ARE THE ONLY WARRANTIES MADE BY MANUFACTURER IN CONNECTION WITH THE PRODUCT AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

## **EXPORT CONTROL**

Purchaser understands that certain transactions of Manufacturer are subject to export control laws and regulations, such as 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 Manufacturer 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

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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, Manufacturer may suspend its obligations and the Purchaser's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, Manufacturer may at its option terminate the relevant order in all cases without incurring any liability towards the Purchaser or end-user.

Purchaser 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 Purchaser. Purchaser accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Purchaser shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Purchaser shall indemnify Manufacturer 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 Purchaser's or its customers' breach or non-compliance with this section.

#### **ANTI – BRIBERY**

Purchaser and its owners, officers, directors, employees, or agents have not and will not engage in any activities that violate the United States Foreign Corrupt Practices Act, the UK Bribery Act, or any other anti-corruption laws or laws prohibiting the payment of commercial or private bribes. In particular, and not in limitation of the foregoing, Purchaser and its owners, officers, directors, employees, or agents will not pay, offer, or promise to pay, or authorize the payment directly or indirectly, of any money, gift, or anything of value to any Government Official, as defined below, for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to any person. As used in this Section, "Government Official" means any minister, officer, director or employee of a government or any department, agency, or instrumentality thereof, or of a public international organization (such as the World Bank, International Monetary Fund or United Nations), or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

#### **INDEMNIFICATION**

Purchaser shall indemnify, defend and hold harmless Manufacturer and its officers, directors, agents, employees, affiliates, successors, and assigns from and against all losses, liabilities, costs and expenses arising out of or in connection with any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by: (a) the negligent use, application, or installation of Product by Purchaser or its employees, partners to whom Purchaser sold Product, contractors, agents or affiliates, (collectively, "Purchaser Parties"); or (b) the modification of Product or integration of Product into other products by any of the Purchaser Parties unless authorized in writing by Manufacturer. Purchaser shall not join, settle or otherwise attempt to affect or dispose of any such claim without Manufacturer's written consent.

#### **PROPRIETARY RIGHTS**

Manufacturer shall defend any suit or legal proceeding brought against Purchaser by a third party based on a claim that the manufacture and sale of a Product, or any part thereof, constitutes infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for defense of same, and Manufacturer shall pay damages or costs finally awarded against Purchaser therein to the extent that such damages and costs are directly and solely attributable to such infringement. The use of such Products by Purchaser is beyond the control of Manufacturer and Manufacturer has no obligation or liability whatsoever in connection with any suit claiming infringement by reason of the use of the Products.

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Notwithstanding the foregoing, with respect to all Products manufactured by Manufacturer, either in whole or in part, to Purchaser's designs, specifications or instructions, Purchaser shall defend and hold harmless Manufacturer from all liability, loss, cost and expense (including attorney's fees) resulting from claims of alleged infringement of patents, designs, copyrights, trademarks, and other proprietary rights.

If any Product is, or in Manufacturer's opinion is likely to become, the subject of a claim of infringement under this Section or if Manufacturer receives from a claim of infringement from a third party in relation to any of the Products, Manufacturer shall have the right, without obligation or liability and at its sole option, to: (i) procure for Purchaser the right to continue to use or sell the Product; (ii) replacement the Product with anon-infringing product, or (iii) modify the Product in such a way as to make the modified Product non-infringing; or (iv) repurchase such Product from the Purchaser for the initial price paid by Purchaser less reasonable depreciation; or (v) suspend or discontinue supplies to Purchaser of the Products or parts to which such notice relates or (vi) terminate any agreement to the extent related to such Product.

### **CONFIDENTIALITY**

Purchaser shall maintain as confidential any information furnished or disclosed to it by the Manufacturer, whether disclosed in writing or disclosed orally, relating to the business of the Manufacturer, its customers, employees, and/or its patients, and the quotation and its terms, including the pricing terms under which Purchaser has agreed to purchase the products. Purchaser shall use the same degree of care to protect the confidentiality of the disclosed information as it uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Purchaser may disclose such confidential information to its employees on a need to know basis necessary to perform the transactions contemplated herein. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Terms and Conditions or any other obligation of confidentiality or (b) is lawfully obtained by the Purchaser from a third party without any breach of confidentiality or violation of law.

### **SOFTWARE LICENSE**

Any software included with a Product or otherwise licensed by Manufacturer to Purchaser, is licensed and not sold. The license is nonexclusive and is limited to use with the Product. No other use is permitted and Manufacturer retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks and trade secrets. Purchaser shall not sell, transfer, sublicense, reverse engineer or disassemble or redistribute the software. Purchaser shall not copy, disclose, or display any such software or otherwise make it available to others. Software licensed or provided by Manufacturer to Purchaser may require that Purchaser agree to a separate service agreement or terms of use in connection with the license or use of such software. Purchaser hereby agrees (i) to be bound by any such service agreement or terms of use to the extent accepted by Purchaser prior to use of the software and (ii) that such terms shall be in addition to those set forth herein. To the extent that there are any inconsistencies between the terms set forth herein and any software service agreement or software terms of use, the software service agreement terms or terms of use, as applicable, shall apply.

### **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the products to be purchased hereunder or otherwise relating to the subject matter of this Agreement. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Manufacturer. If the products purchased from Manufacturer are to be used in the performance of a

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government contract or subcontract, no government requirements or regulations shall be binding upon Manufacturer unless specifically agreed to by Manufacturer in writing.

#### **APPLICABLE LAW; LIABILITY**

The law applicable to sales in the United States under these Terms and Conditions shall be Article 2 of the Uniform Commercial Code as applicable to the state of destination. The United Nations Convention on Contracts for the International Sales of Goods is hereby excluded and shall not apply.

UNDER NO CIRCUMSTANCES SHALL MANUFACTURER'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCTS, IN CONTRACT, TORT OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCT TO WHICH SUCH LIABILITY RELATES. IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR COMPENSATORY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOST REVENUES OR PROFITS, BUSINESS OR GOODWILL EVEN IF MANUFACTURER HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

#### **PRODUCT SAFETY**

Purchaser shall comply fully with all applicable laws, industry safety standards applicable to the manufacture, distribution or sale of items incorporating the products supplied by Manufacturer, including but not limited to American National Standards Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-27 (or equivalent eye safety labeling standards) and International Standard IEC 62471-2006, published by the International Electrotechnical Commission, including all marking, labeling, and supplemental user and service information (if any) required by the standards, where applicable. Purchaser shall comply fully with all applicable safety-related laws, rules and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the products supplied by Manufacturer. Purchaser shall obligate all persons and entities buying such products from Purchaser (other than end users) to comply with such industry standards, laws, rules or regulations applicable to such person or entity. Purchaser shall defend and hold Manufacturer harmless against any expense, loss, costs or damages relating to any claimed failure by Purchaser to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Purchaser which incorporate the products supplied by Manufacturer.

#### **GENERAL TERMS**

Bankruptcy. If Purchaser becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Manufacturer may cancel any unfulfilled obligations, or suspend performance; however, Purchaser's financial obligations to Manufacturer shall remain in effect.

Assignment. Purchaser may not assign any rights or obligations in connection with the transactions contemplated herein without the prior written consent of Manufacturer, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.

Governing Law. All transactions contemplated by these Terms and Conditions shall be governed by the laws of the Commonwealth of Massachusetts, without regard to that state's choice of law principles. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

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Headings. The headings contained herein are intended for convenience only and shall not be used to interpret the terms hereof.

Severability. If any provision of these Terms and Conditions are deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.

Performance. The failure of Purchaser or of Manufacturer at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting these Terms and Conditions.

Obligations. Purchaser's obligations are independent of any other obligations the Purchaser may have under any other agreement, contract, or account with Manufacturer. Purchaser will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Manufacturer.

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