

TERMS OF SALE

All sales of products of EJ Ajax & Sons, Inc., ("Seller") are made on the following terms and conditions. In these Terms of Sale, any products sold by Seller to the buyer ("Buyer") are referred to below as "goods."

1. Agreement. If Buyer has not otherwise agreed to these Terms of Sale, then Buyer's acceptance of delivery of, or payment for, the goods shall constitute Buyer's agreement to these Terms. Seller objects to and will not agree to any terms that are additional to or different from these terms. Terms that are printed on or contained in a purchase order or other form prepared by Buyer which are additional to, in conflict with or inconsistent with those herein shall be considered to be inapplicable and shall have no force or effect.

2. Payment Terms. Unless otherwise specified payment in full of the price is due thirty (30) days after shipment, without discount, except that if at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit or if Buyer shall at any time be in default in any indebtedness or obligation owing to Seller, then Seller may require advance payment or may ship C.O.D. Any payment not made when due shall accrue a finance charge of 1-1/2% per month. Buyer shall pay the reasonable costs and expenses (including reasonable attorney fees) incurred by Seller in collecting or attempting to collect any amounts owing from Buyer to Seller. Payment must be made at Seller's office in Minneapolis, Minnesota. Seller has the right to increase or decrease its prices at any time upon notice to Buyer to reflect any significant or unforeseen change in Seller's costs, including, but not limited to, the cost of materials. Seller shall not be responsible for, and Buyer may not back-charge Seller for, sorting or inspection fees, excess freight charges or allegedly defective goods without Seller's prior written authorization.

3. Delivery and Risk of Loss. Unless otherwise stated delivery shall be F.O.B. Seller's plant or other point of origin, but risk of loss of the goods shall pass to Buyer upon identification of the goods to this contract. Shipping dates are estimates only, and time is not of the essence. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the goods, unless otherwise specified by Buyer.

4. Unavoidable Delay. If Seller is unable to finish and ship the goods to Buyer on time because of anything Seller cannot control (such as casualty, labor trouble, fire, flood, governmental act or regulation, riot, inability to obtain supplies, materials or shipping space, plant breakdown, equipment failure, power failure, delay or interruption of carriers, tool defects, unscheduled maintenance, accident or acts of God), then the estimated delivery time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay.

5. Defects; Remedies. Buyer agrees to inspect the goods immediately upon receipt of such goods from Seller. If, prior to use, fabrication or alteration by Buyer, any item of goods not subject to abuse or misuse proves to be defective (as defined below) within 30 days

following the date of delivery of the goods, and if Buyer gives written notice to Seller of such defect within that period and does not use, fabricate or alter the goods, then Seller shall, at Seller's option, either repair or replace the defective item, at Seller's expense. Notice of a defect must be made in writing addressed to Seller, setting forth sufficient detail to permit identification by Seller of the claimed defect. Samples should accompany such notification. If Buyer uses, fabricates or alters the goods or fails to notify Seller within the 30 day period following shipment of the goods, any claim shall be conclusively deemed to have been waived by Buyer with respect to the alleged defect. In the event of a defect in any goods provided herein, Seller shall furnish instructions for the disposition of the defective goods. Seller shall have the option of requiring the return of the defective goods, transportation prepaid, and proof that the goods were not used, fabricated or altered or subject to misuse or abuse to establish the claim. No goods shall be returned to Seller without its prior written consent. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective, and if Seller determines that the goods are not defective they may be returned to Buyer at Buyer's expense. If Seller fails to repair or replace any defective item within a reasonable time, then Seller shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party, or (ii) that part of the purchase price of the defective goods that shall have been paid by Buyer, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item. An item shall be considered "defective" if it is found by Seller to have been defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that the goods shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of goods that have been approved by Buyer, or (ii) they conform with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved. If Buyer's representative agrees, either orally or in writing, to a change in or waiver of the specifications for any item of good, then such goods shall not be considered defective to the extent they conform to the specifications; as so changed or waived. This paragraph sets forth Buyer's sole and exclusive remedies for any defect in the goods.

6. Unrestricted Right of Sale. Seller shall have the unrestricted right to sell to other parties products identical or similar to the goods, unless the products conform precisely to designs and specifications furnished to Seller by Buyer and Buyer has provided Seller with timely evidence that Buyer is vested with exclusive patent rights in such designs and specifications.

7. Seller's Exclusive Rights in Goods. If the goods are made to Seller's designs and specifications, Seller shall retain exclusive proprietary rights in such designs and specifications, and. Buyer shall not obtain products conforming to or based upon such designs or specifications from any source other than Seller without the prior written authorization of Seller.

8. Seller's Exclusive Rights in Modifications. All modifications of the goods, of their designs and specifications, and of methods of their manufacture, handling, installation, operation, and use originated or developed by Seller or acquired by Seller from other parties shall be and remain the exclusive property of Seller, regardless of whether Buyer or Seller provided the original designs and specifications, and Buyer shall not obtain products embodying, incorporating or employing any such modifications from any source other than Seller without the prior written authorization of Seller.

9. Limitations. SELLER MAKES NO WARRANTIES AS TO THE GOODS AND, IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS. ALL GOODS ARE SOLD “AS IS” AND “WITH ALL FAULTS.” SELLER SHALL HAVE NO TORT LIABILITY TO BUYER WITH RESPECT TO ANY OF THE GOODS AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES FROM ANY BREACH. Buyer shall have no right of revocation of acceptance of the goods.

10. Components of Another Product. If any of the goods constitute parts or components to be incorporated or installed in a product manufactured or assembled by or for Buyer, then (i) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (ii) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards, and (iii) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that shall be necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

11. Resale. On any resale of the goods, Buyer shall contractually limit its buyer’s rights and remedies against both Buyer and Seller to the same extent as Buyer’s rights and remedies are limited above.

12. Tooling. If Seller imposes and Buyer pays a separately-identified charge for tooling to be used in the manufacture of the goods, then the tooling shall be the property of Buyer, subject to the following: (i) risk of loss of the tooling shall at all times remain with Buyer; (ii) Seller retains, and Buyer grants to Seller, a security interest in the tooling to secure all obligations at any time owing by Buyer to Seller; (iii) Buyer shall have no right to possession of the tooling as long as Seller has any outstanding obligation to sell, to Buyer goods whose manufacture requires use of the tooling; (iv) Buyer shall reimburse Seller on demand for all costs of modifications of the tooling made reasonably necessary by changes iii the specifications for the goods; and (v) upon Seller’s demand, Buyer shall immediately remove the tooling from Seller’s premises, at Buyer’s expense,. and if Buyer fails to do so within ten days after that demand, Seller may destroy or otherwise dispose of the tooling, without limber notice or liability to Buyer.

13. Cancellation.

(a) Buyer has no right to cancel its agreement to purchase the goods from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts determined by Seller) for (i) the realizable value to Seller of any standard components, purchased or ordered by Seller before cancellation, (ii) the realizable scrap value to Seller of the remaining material and tooling purchased, fabricated or ordered by Seller before cancellation, and (iii) any direct labor costs saved by Seller by reason of the cancellation.

(b) If Buyer fails to pay or perform any indebtedness or obligation owing to Seller (whether or not related to the sale of goods described on the reverse side), then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts providing for Seller to sell goods to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

14. Indemnity. Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including attorney fees, that Seller incurs as a result of any breach by Buyer of any of its obligations under these Terms of Sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods to Buyer's specifications.

15. Seller's Rights. Seller has all rights and remedies given to sellers by applicable law, and Seller's rights and remedies are cumulative and may be exercised from time to time. A waiver by Seller of any right on one occasion will not be a waiver of any future exercise of that right.

16. Time For Bringing Action. Any action by Buyer against Seller for breach of this Agreement or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

17. Applicable Law. This agreement between Seller and Buyer shall be considered to have been made in the State of Minnesota, and it shall be governed by and interpreted according to Minnesota law. Any action arising out of or relating to this agreement may be brought in any federal or state court in Minneapolis, Minnesota having jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

18. Taxes. Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not Seller invoices Buyer for them.

19. Complete Agreement; Amendment. These standard Terms of Sales contain the entire agreement between Buyer and Seller. Any change in this agreement must be in writing signed by the Seller and the Buyer.

E.J. Ajax and Sons, Inc.
June 2006