

Jack Cartwright Inc./Boss Design Group

Terms & Conditions of Sale

1. BASIS OF CONTRACT.

1.1. These Terms and Conditions ("Terms"), together with the provisions in any written proposal, purchase order acknowledgement or other document issued or executed by Jack Cartwright Inc. including under the trade and/or brand names of Boss Design and/or Jack Cartwright ("Company") (collectively, "Contract"), constitute the entire agreement between Company and Customer concerning the sale of non-consumer goods by Company to Customer ("Goods").

1.2. Each order for Goods by Customer from Company shall be deemed to be an offer by Customer to purchase Goods subject to these Terms. Customer's issuance of any purchase order to Company or acceptance of any Goods supplied by Company shall constitute Customer's acceptance of these Terms. It is Customer's obligation to ensure that the terms of its order and any applicable specifications are complete and accurate.

1.3. Any variation to these Terms and any representations about the Goods including any purported oral modifications shall have no effect unless expressly agreed in writing and executed by Company.

1.4. No order placed by Customer shall be deemed to be accepted by Company until a written acknowledgement of order is issued by Company. Any order shall be accepted entirely at the discretion of Company.

1.5. Any quotation or estimate made by Company shall not constitute an offer and is given subject to these Terms. If Company is deemed to have made an offer to Customer, acceptance shall be limited to the terms offered in writing by Company, including these Terms, and Company objects to any additional, omitted or inconsistent terms submitted or proposed by Customer. Quotations will be valid for 30 days from date of issue.

1.6. Any order by Customer accepted by Company in whole or in part in accordance with Section 1.4 is final and binding and may only be amended or cancelled by Customer with Company's prior written consent. If Customer amends or cancels an order with Company's prior written consent, it shall be liable to pay to Company all costs reasonably incurred by Company, or which Company is committed to incur, in fulfilling the order up until the date of Company's acceptance of the amendment or cancellation, together with Company's loss of profit on the Contract.

2. DELIVERY AND ACCEPTANCE OF GOODS.

2.1. Unless otherwise agreed in writing by Company, delivery of the Goods shall be Ex-Works Company's factory (High Point, NC) on international orders and FOB (High Point, NC) on shipments within the continental USA.

2.2. Unless otherwise instructed, Company reserves the option to ship by its preferred option at Customer's cost. Upon request, Company will prepay freight for accounts with established credit and a service charge of the freight bill, will be added. Company will use commercially reasonable efforts to ship orders complete and on schedule, however, Company reserves the right to make partial shipments as Goods are ready.

2.3. Any dates specified by Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time. Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined below) or Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

2.4. If for any reason Customer does not accept delivery of any of the Goods when they are ready for delivery or Company is unable to deliver the Goods on time because Customer has not provided appropriate instructions, documents, licences, payments, or authorizations, then the Goods will be deemed to have been delivered on the date and time specified by Company as the time of delivery, risk shall pass to Customer (including for loss or damage caused by Company's negligence) at such time and Company shall store the Goods until delivery takes place and may charge Customer for the costs of transfer and storage and/or the following charges: (i) where Customer fails to notify or notifies Company of the delay less than 72 hours prior to the time of delivery: 5% of the value of the order per week of delay; or (ii) in all other cases: 2.5% of the value of the order per week of delay.

2.5. Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless Customer notifies Company in writing of any defect or other failure of the Goods to conform with the Contract within 3 days of the date of delivery of the Goods. Failure to make a claim within said period shall constitute acceptance of the Goods by Customer and Customer shall not be entitled to reject the Goods and Company shall have no liability for such defect or failure, and Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

2.6. Goods, once delivered, may not be returned unless their return is agreed in advance in writing by Company, and subject to the following conditions: (i) Goods are returned in a new and unused condition; (ii) any packaging remains unbroken and in reasonably good condition; (iii) returns are made within 2 weeks of delivery of those Goods, all transport and other re-delivery costs of whatever nature are paid by Customer; and (iv) returned goods shall be accompanied by a written record of invoice number, date and a description of reasons for their return.

2.7. In the event Goods are received that were damaged in transit, Customer should file a claim with the common carrier immediately and keep the original shipping box for inspection by the carrier. Claims for damage or shortage should be filed with the carrier within 5 days of delivery. All claims against Company for defects, errors, or shortages shall be otherwise made in accordance with these Terms.

3. PASSING OF RISK AND LEGAL TITLE.

3.1. Customer shall have all risk of loss following delivery of the Goods by Company to the common carrier. Notwithstanding the foregoing, equitable title and ownership to the Goods shall remain with Company until Company has received full payment thereto.

3.2. To secure payment of the purchase price and any other amounts due to Company from Customer under the terms of the Contract, Customer hereby grants Company (as Secured Party) a purchase money security interest in the Goods and the proceeds thereof. Customer hereby gives Company the authorization to sign and file a financing statement (UCC 1 Form) securing the interest of Company to the Goods. To enforce Company's security interest, Company shall have all of the rights and remedies available to a secured party under the Uniform Commercial Code and other applicable laws.

4. PRICE AND PAYMENT.

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4.1. Unless otherwise agreed by Company in writing, the price for the Goods shall be the price set by Company on the date of delivery or deemed delivery of the Goods. Company reserves the right to change prices without prior notice.

4.2. Unless otherwise agreed in writing, the price for the Goods shall be exclusive of any sales or value added tax, tariffs or customs charges and all costs or charges in relation to packaging, labelling, loading, unloading, carriage, freight and insurance all of which amounts Customer will pay, where appropriate, when it is due to pay for the Goods.

4.3. Company may invoice Customer for the Goods on or at any time after delivery.

4.4. Payment for the Goods is due NET 30 days from the date of invoice with credit Time for payment shall be of the essence. Cash customers will be required to pay a 50% deposit prior to production and 50% final balance before shipping.

4.5. Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

4.6. If any sum due from Customer to Company under the Contract or any other contract is not paid on or before the due date for payment then, in addition to all other remedies available to Company under applicable law, all sums then owing by Customer to Company shall become due and payable immediately and Company shall be entitled to: (i) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods; (ii) require Customer to pay for Goods prior to their despatch or collection from Company's place of business; and (iii) charge Customer: (A) interest at the rate of 1% per month on the delinquent account and (B) the cost of obtaining judgment or payment to include all reasonable attorney's fees and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

4.7. CIT/Commercial Service Inc. (P.O. Box 31307 Charlotte, N.C 28231) serves as Company's factors. They will open an account for Customer provided Customer is satisfactory rated with a recognized credit agency. If Customer is not so rated, Customer may still apply to open an account by submitting Customer's name, address of its bank, and trade references to CIT. Customer should allow for delay in credit checks. In addition, Company will process orders upon receipt of ½ deposit, balance required before shipment. Credit application is available at www.jackcartwright.com. Company accepts all major credit cards for payment of orders up to \$5,000 in value. A convenience fee of 3.5% per order will be charged for orders over \$5,000.

5. LIMITED WARRANTY.

5.1. Company warrants that the Goods supplied hereunder shall be free from material defects in materials and workmanship under normal single shift use and service for a period of five (5) years from the date of shipment ("Warranty Period") for sales made to the original end user. Notwithstanding the foregoing, Company's warranties shall not extend to: (i) any defect arising from normal wear and tear, damage resulting from transportation, wilful damage, negligence, accident, abnormal working conditions, failure to follow Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Company's approval; (ii) any Goods if the total price for the Goods has not been paid by the due date for payment; (iii) any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to Company by Customer; (iv) in respect of any type of defect, damage or wear specifically excluded by Company by notice in writing; (v) if Customer makes any further use of the Goods after giving notice in accordance with this Section 5; and (vi) for any defects or claims relating to the fabric, leather, vinyl, and any other covering materials used for the Goods. Any claim by Customer for any breach of Company's limited express warranty with respect to any Goods must be made by Customer to Company in writing during the Warranty Period, or such claim shall conclusively be deemed to have been waived by Customer.

5.2. In the event of a claim by Customer under Company's express limited warranty, Customer must notify Company of the claim and obtain Company's written consent and shipping instructions prior to returning the Goods. Unauthorized returns will not be accepted and will be returned freight collect. Customer must return the Goods to Company together with written notification of such alleged defect for inspection by Company, after which, Company shall at its option and within a reasonable time: (i) repair or replace such Goods free of charge to Customer (including all costs of transportation of any Goods or materials to and from Customer for that purpose); or (ii) issue a credit to Customer in respect of the whole or part of the Contract price of such Goods as appropriate having taken back such Goods or materials relating to such Goods, provided that the liability of Company under this Section 5 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of Company's liability under this express limited warranty.

5.3. COMPANY MAKES NO OTHER EXPRESS WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THESE TERMS AND MAKES NO IMPLIED WARRANTIES, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WITH RESPECT TO THE PRODUCTS WHICH ARE THE SUBJECT OF THIS CONTRACT AND COMPANY EXPRESSLY DISCLAIMS ALL SUCH OTHER WARRANTIES. NO VERBAL STATEMENT BY COMPANY'S AGENTS OR EMPLOYEES, MADE BEFORE OR AFTER THE EXECUTION OF THIS CONTRACT, AND NO SAMPLES, DRAWINGS, DESCRIPTIVE MATTER, ADVERTISING, OR ANY DESCRIPTIONS OR ILLUSTRATIONS CONTAINED IN ANY COMPANY CATALOGUE OR BROCHURE SUBMITTED BY COMPANY OR PROVIDED TO CUSTOMER, SHALL BE CONSTRUED AS BEING A PART OF THIS CONTRACT OR CREATING ANY WARRANTIES, EXPRESS OR IMPLIED.

5.4. All Goods are produced to price list specifications unless otherwise agreed in writing. All dimensions are approximate. Company reserves the right to amend the specifications or make modifications of the Goods without prior notice or if required by any applicable statutory or regulatory requirements and such changes shall not affect the validity of the Contract.

6. LIMITATION OF LIABILITY.

6.1. In all events, Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price of the Goods at issue.

6.2. Company shall not be liable to Customer for any loss of profit or other economic loss (direct or indirect), indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) which arises out of or in connection with the Contract, or for any liability incurred by Customer to any other person for any economic loss, claim for damages or awards howsoever arising from the Goods or otherwise.

6.3. To the extent that the Goods are to be manufactured in accordance with a specification supplied by Customer, Customer shall indemnify Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable attorneys' fees, costs and expenses) suffered or incurred by Company in connection with any

claim made against Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Company's use of the specification.

7. COVERING MATERIALS AND CUSTOMER MATERIALS.

7.1. Yardage requirement is based on 54" wide plain covering material and must be increased if less than 54", if the pattern requires matching and/or has a nap or pile. Leather requirements are based on formula of 18 square feet of leather equals one linear yard of 54" wide over material. Small hides may require additional square footage.

7.2. Special instructions for handling materials (pattern, direction of stripe, right side of reversible fabric, etc.) must be submitted by Customer in writing before fabric is delivered. In the absence of special instructions, Company reserves the right to use its own judgement. Furniture specified using multi-fabric applications or contrasting welts will be up charged. Contact factory.

7.3. Company reserves the right to reject any covering which, in our opinion, is unsuitable for upholstery purposes. However, in no instance shall Company be held responsible for unsatisfactory results due to use of covering unsuitable for our manufacturing methods.

7.4. Inasmuch as mills and tanneries do not guarantee their products, Company shall not be held responsible for differences in color or tone between covering material supplied and samples from which selection has been made. Nor shall Company be held responsible for wear, fading, puddling, stretching or performance of any covering material whether supplied by ourselves or Customer.

7.5. Company will not be responsible for errors caused by Customer not supplying Company with sample cuttings attached to their order giving full identification of covering material (name of supplier, covering name, number, and color) for identification purposes and advising Company of model number and quantity to which each cover is to be applied.

7.6. Customer's own material that is shipped freight collect will be refused. A service charge will be applied for the return of unusable Customer own material. Contact factory. Outside of Customer's own material packages are to be marked with Company's acknowledgment number, Customer's firm name, job and order number, Company model number and quantity. Ship freight prepaid to:

Cartwright, Incorporated
2014 Chestnut Street
High Point, North Carolina 27262

8. SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS.

Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of Company. Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.

9. FORCE MAJEURE.

Company reserves the right to suspend or cancel the Contract in whole or in part (without liability to Customer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to any circumstances beyond the reasonable control of Company including, without limitation, acts of God, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock outs or other industrial action (whether of the affected party's own employees or others), failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services ("Force Majeure Event") provided that, if the event of force majeure continues for a continuous period in excess of 3 months, Customer shall be entitled to give 2 month's prior notice in writing to Company to terminate the Contract.

10. BREACH OF CONTRACT OR INSOLVENCY.

10.1. Without limiting its other rights or remedies, Company may immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods, stop any Goods in transit or by notice in writing to Customer terminate the Contract without liability to Company: (a) if Company shall not have received a payment from Customer, when due, and such failure of payment shall remain uncured for a period of fourteen (14) days; (b) if Customer shall fail to perform any other obligation under the Contract and such failure is not excused or cured within fourteen (14) days after written notice thereof; (c) Customer files a petition in bankruptcy or otherwise commences or acquiesces in the commencement of a proceeding under any bankruptcy, insolvency, reorganization or similar law, or makes an assignment for the benefit of creditors, or has a bankruptcy petition filed against it which is not withdrawn or dismissed within thirty (30) days after filing, or has a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its assets or otherwise becomes insolvent; (d) Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or (e) Customer's financial position deteriorates to such an extent that in Company's opinion Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2. Notwithstanding any such termination or suspension in accordance with Section 10.1 Customer shall immediately pay Company for all Goods delivered up to and including the date of suspension or termination together with any interest.

10.3. Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

10.4. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. NON-SOLICITATION.

Customer agrees that, during the term of the Contract and for the period of 6 months after its termination, it shall not without the prior written consent of Company: (i) make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by Company at any time during the term of the Contract; and/or (ii) solicit or attempt to solicit services from any employee on their own account or entice or attempt to entice any employee away from Company.

12. NOTICES.

All notices, consents, communications or transmittals under the Contract shall be in writing and shall be deemed received on the day of delivery if delivered by hand, by nationally recognized overnight courier or delivery service (with written confirmation of the completed delivery) or by facsimile (with written confirmation of the completed transmittal); or within three (3) business days if mailed by United States mail as certified or registered mail with return receipt, postage prepaid, addressed to the party to whom such notice is given at the address of such party stated in the Contract.

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13. **GENERAL.**

13.1. Any intellectual property rights created by Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods shall remain Company's property. Nothing in the Contract shall be deemed to have given Customer a licence or any other right to use any of the intellectual property rights of Company.

13.2. Both Company and Customer shall each keep confidential and shall not, without the prior written agreement of the other, disclose to any third party or otherwise make public the terms of the Contract or any other confidential or sensitive information of the other party.

13.3. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

13.4. If any condition is held to be invalid for any reason, such invalidity will not affect the rest of the Contract which will remain valid and enforceable in all respects.

13.5. The Contract sets out the entire agreement and understanding between Customer and Company in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by Company purporting to set out its terms and conditions of sale of the Goods.

13.6. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

14. **GOVERNING LAW AND JURISDICTION.**

This Contract shall be governed by and be construed in all respects in accordance with the laws of the State of North Carolina, United States of America, and all disputes or claims arising out of or relating to this Contract shall be subject to the exclusive jurisdiction and venue of the state and federal courts located in Guilford County, North Carolina, United States of America.