

Electronic Data Interchange Agreement

This Electronic Data Interchange Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by and between Ace Hardware Corporation (“Buyer”), a corporation of Delaware, with offices at 2200 Kensington Court, Oak Brook, Illinois 60523-2100, and _____ (“Seller”), a corporation of _____, with offices at _____

Recitals

Buyer and Seller desire to facilitate purchase and sale transactions (“Transactions”) by electronically transmitting and receiving data in agreed formats in substitution for conventional paper-based documents and desire to assure that such transactions are legally valid and enforceable.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

Section 1. Prerequisites.

1.1. Documents; Standards. Each Party may electronically transmit to or receive from the other party any of the transaction sets (collectively “Documents”), listed in the Ace Hardware Corporation Electronic Data Interchange Implementation Guide, as the same may be amended from time to time (“Guide”), which is incorporated herein by reference and made an integral part hereof. Any electronic transmission of data, which is not a Document, shall have no force or effect between the parties. All Documents shall be transmitted in accordance with the standards set forth in the Guide.

1.2. Third Party Service Providers.

1.2.1. Documents will be transmitted electronically to each party, as specified in the Guide, either directly or through any third party service provider (“Provider”) with which either party may contract. Either party may modify its election to use, not to use or to change a Provider upon 30 days prior written notice.

1.2.2. Each party shall be responsible for the costs of any Provider with which it contracts.

1.2.3. Each party shall be liable for the acts or omissions of its Provider while transmitting, receiving, storing or handling Documents, or performing related activities for such party; provided, that if both parties use the same Provider to effect the transmission and receipt of a Document, the originating party shall be liable for the acts or omissions of such Provider as to such Document. However, Buyer does not endorse, recommend or support any use by Seller of software, networks or other related products developed by any Provider to facilitate electronic data interchange with Buyer. Any use by Seller of such software, networks or other related products will be at Seller’s own risk. Buyer makes no warranties, express or implied, including but not limited to, the implied warranties of merchantability or fitness for any particular purpose with respect to Seller’s use of such software, networks or other related products to facilitate electronic data interchange with Buyer, and all such warranties are hereby disclaimed. Under no circumstances will Buyer be liable for any damages,

including but not limited to incidental, exemplary, indirect, special or consequential damages, in any manner arising out of or resulting from the use by Seller of any such software, networks or other products developed by any Provider for the purpose of conducting business via electronic data interchange with Buyer.

1.3. System Operations. Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

1.4. Security Procedures. Each party shall adopt and use those security procedures which are reasonably sufficient to ensure that all transmissions of Documents are authorized and to protect its business records and data from improper access.

1.5. Signatures. Each party shall adopt as its signature an electronic identification consisting of symbol(s) or code(s) which are to be affixed to or contained in each Document transmitted by such party ("Signatures"). Each party agrees that any Signature of such party affixed to or contained in any transmitted Document shall be sufficient to verify that such party originated such Document. Neither party shall disclose to any unauthorized person the Signatures of the other party.

Section 2. Transmissions.

2.1. Proper Receipt. Documents shall not be deemed to have been properly received, and no Document shall give rise to any obligation, until accessible to the receiving party at such party's computer.

2.2. Verification. Upon proper receipt of any Document, the receiving party shall promptly and properly transmit a functional acknowledgment in return, as required in the Guide. A functional acknowledgment shall constitute conclusive evidence that a Document has been properly received.

2.3. Acceptance. Buyer's purchase order shall be deemed accepted by Seller unless Seller rejects such order by a writing within five (5) business days after receipt thereof.

2.4. Garbled Transmissions. If any transmitted Document is received in an unintelligible or garbled form, the receiving party shall promptly notify the originating party (if identifiable from the received Document) in a reasonable manner. In the absence of such a notice, the originating party's records of the contents of such Document shall control.

Section 3. Transaction Terms.

3.1. Terms and Conditions. Each Transaction shall be subject to the terms and conditions of this Agreement, the terms and conditions of Buyer's purchase order, any special terms and conditions referenced in Buyer's purchase order, the terms and conditions included in the Guide, and such additional terms and conditions as may be determined in accordance with applicable law. The terms and conditions of this Agreement shall prevail in the event of any conflict with any other terms and conditions applicable to any Transaction.

3.2. Confidentiality. No information contained in any Document or otherwise exchanged between the parties shall be considered confidential, except to the extent provided in Section 1.5, by written agreement between the parties, or by applicable law.

3.3. Validity; Enforceability.

3.3.1. This Agreement has been executed by the parties to evidence their mutual intent to create binding Transactions pursuant to the electronic transmission and receipt of Documents.

3.3.2. Any Document properly transmitted pursuant to this Agreement shall be considered in connection with any Transaction or in connection with this Agreement to be a “writing” or “in writing”; and any such Document when containing, or to which there is affixed, a Signature (“Signed Documents”) shall be deemed for all purposes (a) to have been “signed” and (b) to constitute an “original” when printed from electronic files or records established and maintained in the normal course of business.

3.3.3. The conduct of the parties pursuant to this Agreement, including the use of Signed Documents properly transmitted pursuant to the Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement.

3.3.4. The parties agree not to contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Signed Documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Signed Documents were not originated or maintained in documentary form.

Section 4. Miscellaneous.

4.1. Termination. This Agreement shall remain in effect until terminated by either party with not less than 30 days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement prior to the effective date of termination. Any pending purchase orders will continue to be honored and fulfilled even if performance is not completed by the effective date of termination.

4.2. Severability. Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

4.3. Entire Agreement. This Agreement and the Guide constitute the complete agreement of the parties relating to the matters specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. No obligation to enter into any Transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

4.4. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois without reference to conflict of law principles.

4.5. Force Majeure. No party shall be liable for any failure to perform its obligations in connection with any Transaction or any Document, where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any Documents.

4.6. Limitation of Damages. Neither party shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the electronic transmission or receipt of any Documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

4.7. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved in accordance with the following:

The parties hereto will attempt to settle any claim or controversy relating to this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. However, either party may by written notice to the other demand that the dispute be submitted to mediation. When such a demand is made, the parties shall within ten (10) days jointly make arrangements for the mediation of the dispute within the State of Illinois with the Center for Public Resources (CPR). If the dispute has not been resolved within sixty (60) days of any written demand for mediation, the dispute shall be submitted to binding arbitration, conducted within the State of Illinois, in accordance with the then current CPR Rules for Non-Administered Arbitration of Business Disputes. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator is not empowered to award damages in excess of compensatory damages with respect to any dispute arising out of or relating to this agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be properly executed on its behalf as of the date first above written.

BUYER:

ACE HARDWARE CORPORATION

By: _____

Name: _____

Title: _____

SELLER:

By: _____

Name: _____

Title: _____