



## GENERAL TERMS AND CONDITIONS POTTERY POTS USA INC.

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### Art. 1 Applicability

- 1.1 These general terms and conditions shall apply to all offers, acceptances, order confirmations, and agreements between Pottery Pots USA Inc. ("Pottery Pots") and the buyer.
- 1.2 All offers are valid for thirty (30) days, unless otherwise specified in the offer.
- 1.3 A purchase agreement (the "agreement") is entered into as soon as Pottery Pots has received the buyer's acceptance of the offer and has sent an order confirmation to the buyer. The buyer agrees to the applicability of these general terms and conditions and acknowledges that any general terms and conditions of its own shall not apply to the agreement.
- 1.4 All order confirmations serve as the purchase agreement and are on the responsibility of the buyer to be thoroughly reviewed to prevent any miscommunication thereafter.
- 1.5 All signed registration forms are for reason of acknowledgement but are not required for the terms and conditions to be in effect.
- 1.6. All additional Pottery Pots policies are applicable to all parties and agreements upon policy creation date.

### Art. 2 Changes

- 2.1 Any changes to the agreement and these general terms and conditions will only be valid if they have been agreed upon between the buyer and Pottery Pots in writing.
- 2.2 If any such changes will result in an increase in or reduction of the costs/sales price, then the subsequent change to the purchase price shall be agreed upon between the parties in writing.
- 2.3 In the event that the parties fail to agree to a new purchase price, then the resulting dispute between the parties will be subject to article 10.4 of these general terms and conditions.

### Art. 3 Quality and Description

- 3.1 Pottery Pots shall supply the goods in accordance with the description, quality and amounts as specified in detail in the offer. The buyer acknowledges the fact that the products are handmade, and that Pottery Pots cannot guarantee 100% likeness between the ordered products and the purchased



products, which has no effect on the quality as promised and agreed upon.

3.2 Pottery Pots shall supply goods that: a. have been manufactured with sound materials and are of solid construction; b. resemble in all respects and as much as possible any samples or models that have been made available or provided by Pottery Pots and/or the buyer (subject to paragraph 1 of this article); c. are described in the order confirmation.

3.3 Any complaints about the products must be made by the buyer to Pottery Pots in writing within two business days after it discovers, or should have reasonably discovered, the shortcoming.

3.4 If the buyer discovers any structural defect in the products within 24 months after delivery, it shall immediately give written notice to Pottery Pots of the structural defect, provided that it has subjected the goods to normal use and care.

3.5 The buyer will have waived its right to complain of any defects of the products after a period of 24 months from the date of delivery has passed.

#### **Art. 4 Packaging and Dispatching**

4.1 Pottery Pots shall adequately package the goods and secure them in such a way that they will reach their destination in good condition provided that they are properly transported.

4.2 The goods will be delivered by Pottery Pots, or dispatched for the purpose of delivery, to the location or locations as agreed upon in the manner or manners as specified in the order or agreed upon in writing at a later date.

4.3 The delivery date cannot be guaranteed.

4.4 In the event that Pottery Pots has made loading pallets, packing cases, crates, containers, etc. available for the packaging and the transportation, or has engaged a third party to do so — whether or not on payment of a deposit or security— then the buyer shall (unless single-use packaging has been used) return those loading pallets, etc. to the address as specified by Pottery Pots, and shall be liable for any damages resulting from any failure to return them to Pottery Pots.

4.5 Buyer shall immediately upon delivery inspect the goods in terms of amounts, product identity, shortages, any transportation damage and, depending upon the outcome of the inspection, sign or refuse to sign for the delivery of the goods.

#### **Art. 5 Transfer of Ownership and Risk**

5.1 Subject to paragraphs 2 and 4 of this article, the ownership and the risk of the goods will be transferred to the buyer upon delivery, unless the parties have agreed in writing otherwise (for example, if the buyer pays for transportation and the ownership is transferred at the time of shipping or the buyer picks up the order from our warehouse and the ownership is transferred at the time of pickup, the so-called Free on Board principle).

5.2 Pottery Pots hereby retains and the buyer hereby grants to Pottery Pots, a security interest (the "Security Interest") in the goods until the buyer has made payment in full for the goods and satisfied all of its obligations to Pottery Pots hereunder. The buyer will execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings that Pottery Pots may at any time reasonably request in order to secure, protect, perfect or enforce the Security Interest and Pottery Pots' rights under this Agreement. Pottery Pots shall have all of the rights of a secured party with respect to the goods under the Uniform Commercial Code ("UCC") and other applicable laws. Upon the buyer's default of any payment obligation, in addition to other rights and remedies it may have under law and equity, Pottery Pots may exercise in respect of the



goods all the rights and remedies of a secured party on default under the UCC, including, without limitation, the right to enforce the Security Interest, to retake possession of the applicable goods and to collect directly from any account obligor all amounts due the buyer with respect to such goods.

5.3 In the event that Pottery Pots has reasonable doubt regarding the payment capacity of the buyer, then Pottery Pots may postpone the delivery of the goods until the buyer has provided surety for the payment(s). The buyer will be liable to Pottery Pots for any damages resulting from such postponed delivery.

5.4 If Pottery Pots postpones the delivery at the request of the buyer, then the goods will remain the property of Pottery Pots and will remain for the risk of Pottery Pots, such until the goods have been supplied to the buyer and delivered at the location or locations referred to in article 4, paragraph 2

#### **Art 6. Delivery**

6.1 Pottery Pots will deliver the goods at the approximated date specified in the order confirmation, once your items are available to ship, or immediately after the end of the term of delivery, respectively. If the parties have agreed in writing on a term of delivery, then this term will commence on the date upon which Pottery Pots confirms the order.

6.2 Timely delivery will always be subject to the goods being in stock. If the goods are not in stock, then Pottery Pots will give notice to the buyer of the expected new term of delivery, which term will not in any case exceed 150 days.

6.3 Any delays in transportation will not give rise to a right on the part of the buyer to terminate the agreement or to claim damages.

#### **Art. 7 Force Majeure**

7.1 The term of delivery as referred to in article 6 shall be extended by any period during which Pottery Pots is prevented from meeting its obligations due to circumstances beyond its control.

7.2 Circumstances beyond Pottery Pots' control shall include, but not be limited to war or the threat of war, civil war, terrorism, riot, acts of war, fire, water damage, flooding, work strike, import/export restrictions, measures implemented by governmental authorities, defects to machines/equipment, malfunctions in the energy supply, affecting either the premises of Pottery Pots or those of third party suppliers to Pottery Pots, or affecting storage or transportation, either under its own management or not.

7.3 In the event that the delivery is delayed for more than two months, from the original or requested order confirmation delivery date, due to circumstances beyond Pottery Pots' control, either party may terminate the agreement in writing.

7.4 If the circumstances beyond Pottery Pots' control occur after partial delivery to the buyer, then the buyer, should the remaining delivery be delayed for a period exceeding two months due to circumstances beyond Pottery Pots' control, will have the right to either keep the goods already delivered with the obligation to pay the purchase price owed for those goods, or to terminate the agreement in writing and to return the goods to Pottery Pots at the expense and risk of the buyer per our return policy, if the buyer can demonstrate that it cannot effectively use the goods already supplied as a result of the non-delivery of the remaining goods.

## **Art. 8 Warranty**

8.1 Pottery Pots warrants for a period of twenty four (24) months (60 months for artificial plants) after delivery that the goods will be free from defects in materials and workmanship under proper care (including faulty design, materials, or workmanship, but excluding ordinary wear and tear). Pottery pots provides no warranty that the goods will be suitable for the buyer's purposes or embellishments.

8.2 to the maximum extent permitted by applicable law, Pottery Pots' sole liability is expressly limited to either repair of a defective good, free of charge, or, at the sole discretion of pottery pots, the (partial) replacement of the defective good. To the maximum extent permitted by applicable law, pottery pots disclaims all other warranties, express, implied, statutory or otherwise, including without limitation any warranty of merchantability, fitness for a particular purpose, intellectual property infringement or third party rights, or based on course of conduct or trade custom or usage, and in no event shall pottery pots be liable for any lost profits or any consequential, special, incidental, punitive, exemplary or indirect damages, however caused and on any theory of liability arising from this agreement. The parties further agree that each and every provision of this agreement that provides for a limitation of liability, disclaimer of warranties or exclusion of damages is expressly intended to be severable and independent of any other provision since those provisions represent separate elements of risk allocation between the parties and shall be separately enforced. No action, regardless of form, arising under this agreement may be brought by the buyer more than one (1) year after the occurrence of the events which gave rise to the cause of action.

8.3 The buyer shall indemnify, defend and hold Pottery Pots harmless from and against any and all claims, actions, losses, damages, demands, liabilities, costs and expenses, including reasonable attorney's fees and expenses, whether a suit or other proceeding is initiated or not, which may arise from, but not limited to, the following events: (i) representations or misrepresentations made by the buyer, (ii) any neglect by the buyer or end-users, (iii) the buyer's or end-user's use of the goods not in compliance with published specifications thereto or not for their intended purposes, (iv) the buyer's or end-user's modifications or alterations of the goods, (v) damage from the buyer or end user misuse, or operation outside of the environmental specifications for the goods, or (vi) any other act, or failure to act, not in accordance with the terms and conditions of this agreement by the buyer, or any other breach by the buyer of any representations, warranties, or covenants of the buyer under this agreement.

## **Art. 9 Price and payment**

9.1 In addition to the price of the goods, the purchase price also includes the price of the packaging, the transportation and the cost of delivery attributes at the location(s) as specified by the buyer

9.2 The buyer shall pre-pay the purchase price in full before shipping, unless the parties have agreed to a different term of payment in the offer, the acceptance and the order). The buyer will not be entitled to deduct any amount from the purchase price for any claim it may have against Pottery Pots.

9.3 If the buyer fails to timely pay the purchase price, then Pottery Pots shall be entitled to either (i) terminate the agreement without the intervention of the court, after which the buyer will be obligated to properly return the goods at its expense to Pottery Pots within ten days of termination, or (ii) commence legal proceedings against the buyer for payment of the purchase price. In the event Pottery Pots terminates the agreement, the buyer will be liable for any damages incurred by Pottery Pots, including any lost profits, costs of transportation of the goods (to and from), and any costs incurred in connection with the collection of the payment of the purchase price, including any legal fees.



9.4 If the buyer fails to timely meet its payment obligations, then Pottery Pots shall be entitled to interest at the rate of 12% per year on the principal sum due.

#### **Art. 10 Termination**

10.1 Without prejudice to article 9, the agreement may be terminated by Pottery Pots (without the intervention of the court), in the event the buyer is declared bankrupt, files for a (provisional) moratorium on payments, or loses the authority to dispose of its assets or parts thereof as a result of an attachment or otherwise.

10.2 As a result of the termination, any claims of Pottery Pots will become payable on demand. The buyer shall be responsible for the (return) delivery of the goods to Pottery Pots and shall be liable for any damages suffered by Pottery Pots, including, but not limited to any lost profits and costs of transportation.

10.3 Disputes resulting from any changes to the agreement allows Pottery Pots to have the ability to terminate the agreement and keep payments as a store credit per the discretion of Pottery Pots

#### **Art. 11 Applicable law; Dispute**

##### Resolution

11.1 This agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, excluding its conflict of laws.

11.2 Any controversy between the parties arising out of any of the terms, covenants, or conditions of this agreement shall be litigated exclusively in the courts of the State of New Jersey, or a federal court, located in Trenton, New Jersey.

Company details:

Pottery Pots USA Inc.  
122 Kissel Rd, Suite A  
Burlington, New Jersey 08016  
United States of America  
phone: +1 609 438 9050  
e-mail: [sales@potterypots.com](mailto:sales@potterypots.com)  
web: [www.potterypots.com](http://www.potterypots.com)