

1. APPLICABILITY

- (a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) by Klein Cutlery, LLC. (“**Klein Cutlery**”) to the purchaser of Goods (“**Buyer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- (b) These Terms, along with the quantity of Goods specified in Buyer’s purchase order (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Klein Cutlery’s acceptance of Buyer’s order is based on the express condition that Buyer agrees to all of the terms and conditions contained herein. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. ORDERS

- (a) **Placing Orders:** Orders may be placed by mail, telephone, fax, EDI, or via our distributor website.
- (b) **Confirming Orders:** To prevent duplicate purchases, confirming orders should not be sent.
- (c) **Minimum Billing:** Minimum billing is \$100 per order, excluding any freight charges. Orders for less than \$100 charged a \$5 service
- (d) **Drop Ship:** All orders shipping directly to end users will be charged a \$5 convenience fee
- (e) **Cancellations and Additions:** Due to automated equipment, it is impossible to add to orders that have already been placed. Prior to shipment, cancellation of an order for standard merchandise will be accepted without incurring a cancellation fee. Cancellation of an order for non-standard merchandise will not be accepted once the merchandise is in production.

3. DELIVERY

- (a) The Goods will be shipped within a reasonable time after the receipt of Buyer’s purchase order. Klein Cutlery shall not be liable for any delays, loss or damage in transit.
- (b) Unless otherwise agreed in writing by the parties, Klein Cutlery shall deliver the Goods to a location designated by Klein Cutlery at time of shipment (the “**Delivery Point**”) using Klein Cutlery’s standard methods for packaging and shipping such Goods. Buyer shall receive the Goods upon delivery.
- (c) Klein Cutlery may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.
- (d) If, for any reason, Buyer fails to accept delivery of any of the Goods upon delivery, or if Klein Cutlery is unable to deliver the Goods at the Delivery Point because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Klein Cutlery, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. NON-DELIVERY

- (a) The quantity of any installment of Goods as recorded by Klein Cutlery on dispatch from Klein Cutlery’s place of business is conclusive evidence of the quantity received by Buyer on delivery, unless Buyer can provide conclusive evidence proving the contrary.
- (b) If, after a reasonable time, Goods in transit are not received, Buyer should trace through carrier or should contact Klein Cutlery’s Customer Service at 1-800-252-8452 for assistance.

(c) **KLEIN CUTLERY SHALL NOT BE LIABLE FOR ANY NON-DELIVERY OF GOODS (EVEN IF CAUSED BY KLEIN CUTLERY’S NEGLIGENCE) UNLESS BUYER GIVES WRITTEN NOTICE TO KLEIN CUTLERY OF THE NON-DELIVERY WITHIN FOURTEEN (14) DAYS OF THE DATE WHEN THE GOODS WOULD, IN THE ORDINARY COURSE OF EVENTS, HAVE BEEN RECEIVED.**

- (d) Any liability of Klein Cutlery’s for non-delivery of the Goods shall be limited, at Klein Cutlery’s discretion, to either (i) replacing the Goods within a reasonable time, or (ii) adjusting the invoice for such Goods to reflect the actual quantity delivered.

5. FREIGHT TERMS

- (a) Delivery shall be made FCA (Incoterms 2010) with carrier at Klein Cutlery’s facility unless otherwise agreed to by Klein Cutlery.
- (b) Unless otherwise agreed upon, all orders exceeding \$1,500 net billing for standard merchandise placed by stocking distributors will be shipped prepaid via our routing. These freight terms apply to the United States, including Hawaii and Alaska.
- (c) Klein Cutlery has no responsibility for notifying distributors if orders do not meet the requirements for prepayment of freight charges.
- (d) On orders requesting multiple shipping dates, each shipment will be considered a separate order in applying the above freight terms. To facilitate handling, it is requested that separate orders be submitted when multiple shipping dates are desired. All orders calling for multiple shipping dates will be shipped and billed at prices in effect on the date of shipment.
- (e) Buyer purchase orders that do not explicitly state freight collect, shipping method, and include a valid account number agree to ship prepaid and add and accept all freight charges.

6. SHORTAGE OR DAMAGE

- (a) Should a shipment become damaged in transit:
- (i) Immediately contact the carrier for inspection, and have the carrier issue an inspection report. Do not discard the shipping carton, as the carrier’s inspector will need to examine it. If the carton is discarded and the carrier refuses to pay a claim, Klein Cutlery will refuse the customer’s claim.
 - (ii) File a claim with the carrier.
 - (iii) Notify Klein Cutlery by calling its Customer Service (1-800-252 8452).
- (b) **SHORTAGES MUST BE REPORTED TO KLEIN CUTLERY’S CUSTOMER SERVICE AT 1-800-252-8452 WITHIN 14 DAYS OF SHIPMENT. CLAIMS NOT REPORTED WITHIN THIS TIME PERIOD WILL NOT BE ALLOWED.**

7. WARRANTY RETURNS:

- (a) All warranty returns must include a Warranty Return Authorization (WRA) number. The WRA for the U.S. can be obtained by calling Customer Service at 1-800-252-8452.
- (b) Proof of purchase from an Authorized Klein Cutlery’s Distributor is required for all warranty claims.

8. NON-WARRANTY RETURNS

- (a) Goods cannot be returned without prior authorization.
- (b) Product returned must be received by Klein Cutlery in re-saleable condition. Product that cannot go back to stock will not be accepted.
- (c) All returns are subject to a 25% re-stocking fee.
- (d) Custom/made-to-order products may not be returned.

9. SHIPPING ERRORS

For Shipping errors contact Klein Cutlery's Customer Service at: 1-800-252-8452 or CS@HeritageCutlery.com

10. PRICE

- (a) Buyer shall purchase the Goods from Klein Cutlery at the prices (the "Prices") on the price list as of the date that Klein Cutlery ships the Goods. Prices are subject to change without notice.
- (b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Klein Cutlery's income, revenues, gross receipts, personnel or real or personal property or other assets.
- (c) Possession of a price list does not constitute the right to purchase Goods at the prices shown. Prices on such sheet will apply only to duly authorized Klein Cutlery's distributors.

11. PAYMENT TERMS

- (a) Standard payment terms are net 30, subject to credit approval. Buyer shall make all payments hereunder by wire transfer, ACH, or check and in US dollars.
- (b) A service charge of 1.0% per month or fraction thereof, or the highest interest rate permitted by applicable law, will be charged on all overdue accounts.
- (c) All prices and terms are subject to change without notice.
- (d) Buyer shall reimburse Klein Cutlery for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Klein Cutlery does not waive by the exercise or non-exercise of any rights hereunder), Klein Cutlery shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.
- (e) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Klein Cutlery's breach, bankruptcy or otherwise.

12. LIMITED WARRANTY

Klein Cutlery products are warranted to be free from defective workmanship and materials. At its option, Klein Cutlery will repair or replace any product which fails to conform with this warranty under normal use and service. Our liability under all warranties, expressed or implied, shall be limited to the replacement or repair of defective products.

13. LIMITATION OF LIABILITY

- (a) **IN NO EVENT SHALL KLEIN CUTLERY BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT KLEIN TOOLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- (b) **IN NO EVENT SHALL KLEIN CUTLERY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO KLEIN CUTLERY FOR THE GOODS SOLD HEREUNDER.**
- (c) The limitation of liability set forth in Section 13(b) above shall not apply to (i) liability resulting from Klein Cutlery's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Klein Cutlery's acts or omissions.

14. COMPLIANCE WITH LAWS AND POLICIES

- (a) Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Klein Cutlery may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

15. TERMINATION

In addition to any remedies that may be provided under these Terms, Klein Cutlery may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. WAIVER

No waiver by Klein Cutlery of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Klein Cutlery. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of Klein Cutlery, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Klein Cutlery to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Klein Cutlery in writing. Upon Klein Cutlery's request, Buyer shall promptly return all documents and other materials (other than duly-purchased Goods) received from Klein Cutlery. Klein Cutlery shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. FORCE MAJEURE

Klein Cutlery shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Klein Cutlery, including, without limitation: acts of God; flood, fire, earthquake, or explosion; governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; national or regional emergency, revolution, insurrection or epidemic; lockouts, strikes or other labor disputes (whether or not relating to either party's workforce); and restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.

19. ASSIGNMENT

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Klein Cutlery. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. RELATIONSHIP OF THE PARTIES

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. GOVERNING LAW

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

23. SUBMISSION TO JURISDICTION

Buyer agrees that any and all disputes, controversies and claims which arise under or in connection with this Agreement, its interpretation or enforcement, or the breach, expiration, termination or invalidity hereof, shall be submitted to and resolved in the first instance by binding arbitration in Buffalo, New York, pursuant to and in accordance with the Commercial Arbitration Rules and related procedures of JAMS Mediation, Arbitration and ADR Services then in effect by a single arbitrator appointed in accordance with such rules, rather than in court, provided, however, that any valid award issued or made pursuant to such arbitration may be enforced by any court of competent jurisdiction. The award of any such arbitration shall be final and binding on all parties and in lieu of all other remedies and procedures available to the parties, provided that either party may seek preliminary injunctive or other interlocutory relief pursuant to this Agreement prior to the commencement of or during such arbitration proceedings. The arbitrator may award reasonable attorney's fees and expenses of arbitration to the prevailing party in the arbitrator's discretion and may award interest at reasonable commercial rates on amounts determined to be owed under this Agreement by one party to the other but which were not paid at the time required by this Agreement, but shall in no event have power or authority to award punitive or exemplary damages, consequential or incidental damages, any damages which exceed those recoverable under the law of contracts, or any damages which exceed those proscribed elsewhere in this Agreement.

24. NOTICES

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at their respective principle places of business, or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if the party giving the Notice has complied with the requirements of this Section.

25. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. SURVIVAL

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Arbitration and Survival.

KLEIN[®]
C U T L E R Y