



SINCE 1946

**JERSEY POTTERY WHOLESALE AGREEMENT**  
**(Updated June 2014)**

This Wholesale Agreement (“Agreement”) is made by and between the wholesale customer (“Customer”) and Jersey Pottery USA, Inc., a corporation organized under the laws of the State of Delaware with a principal place of business located at 900 Merchants Concourse Suite 211 Westbury, NY 11590 , New York (“Jersey Pottery”) upon execution by Customer and receipt by Jersey Pottery via e-mail, facsimile or mailing. The terms of this Agreement supercede any other terms that the Parties have operated under in the past, any terms that the Customer seeks to impose or incorporate, or any terms which are implied by trade, custom, practice or course of dealing.

I. ORDERING

- A. Any wholesale order for goods submitted by the Customer (“Order”) constitutes an offer by the Customer to purchase Jersey Pottery goods (“Goods”) in accordance with the terms of this Agreement.
- B. The Customer is responsible for ensuring the accuracy and completeness of the terms of the Order. The Customer shall be liable for any mistakes or typos in the Order.
- C. The Order shall only be deemed to be accepted if Jersey Pottery issues an acceptance of the Order (“Order Acceptance”). Upon Jersey Pottery’s issuance of an Order Acceptance, the Contract shall come into existence.
- D. A quote or estimate for pricing of the Goods shall not constitute an Offer or Offer Acceptance. Any price quote or estimate for the Goods shall be valid for twenty (20) days from the issuance date of the quote or estimate.
- E. Jersey Pottery’s standard catalogue of Goods are described on the US section of Jersey Pottery’s website, at [www.jerseypottery.com](http://www.jerseypottery.com). Any non-standard or customized Goods will be as described in Jersey Pottery’s quote or estimate for the same and/or any Order Acceptance.

II. SALE OF GOODS

- A. Unless otherwise expressly permitted in writing by Jersey Pottery, Goods are supplied to Customer on the basis that Customer is buying the Goods for resale through traditional brick and mortar retail stores and outlets to visiting members of the public. Sale of the Goods is not permitted by Customer via online channels, including, but not limited to, Customer’s online retail store(s), third party online retail stores, online auction stores or any other online stores.
- B. In the event that Jersey Pottery discovers that Customer is directly or indirectly reselling, or is enabling a third party to resell, the Goods via the internet or an online retail store, Jersey Pottery shall have the immediate right, but not the obligation, to cancel any of Customer’s future Orders for Goods, to refuse to fulfill current Orders for Goods without any liability to Jersey Pottery.

III. DELIVERY OF GOODS

- A. Jersey Pottery shall ensure that:
1. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods that remain to be delivered; and
  2. if Jersey Pottery requires the Customer to return any packaging materials for the Goods to Jersey Pottery (at Jersey Pottery's expense), such requirement shall be clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Jersey Pottery shall reasonably request.
- B. Jersey Pottery shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after Jersey Pottery notifies the Customer that the Goods are ready.
- C. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location, and liability for the Goods transfers to Customer upon Jersey Pottery's delivery of the Goods to the Delivery Location. All shipping costs for delivery of the Goods to Customer, including but not limited to, freight costs, shipping costs, insurance costs and other related delivery costs, shall be borne by Customer unless otherwise agreed in writing.
- D. Any dates quoted for delivery are approximate only, and the time of delivery is not considered to be "of the essence", unless expressly agreed to by Jersey Pottery in writing. Jersey Pottery shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Jersey Pottery with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- E. If Jersey Pottery fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Customer shall have a duty to mitigate its damages to the extent reasonable under the particular circumstances.
- F. If the Customer fails to take delivery of the Goods within three (3) business days of Jersey Pottery notifying the Customer that the Goods are ready, then, except as otherwise provided under this Agreement: (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third business day after the day on which Jersey Pottery notified the Customer that the Goods were ready; and (b) Jersey Pottery shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance). If the Customer has not taken delivery of the Goods after ten (10) business days after the day on which Jersey Pottery notified the Customer that the Goods were ready for delivery, Jersey Pottery has the right, but not the obligation, to resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- G. Jersey Pottery may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Order. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

IV. QUALITY OF GOODS

- A. Jersey Pottery warrants that on delivery, and for a period of twelve (12) months from the date of delivery ("Warranty Period"), the Goods shall: (a) conform in all material respects with their description as set forth in any quote, estimate or Order Acceptance; (b) be free from material defects in design, material and workmanship; and (c) be at least as high as the best quality of similar Goods currently sold and/or distributed by Jersey Pottery.
- B. If Customer gives notice in writing to Jersey Pottery no more than thirty (30) days after delivery of the Goods that some or all of the Goods do not comply with the warranty set out in Paragraph A above, the Customer shall return such Goods to Jersey Pottery's place of business. Upon determination that the Goods are defective and not conforming to quality requirements, Jersey Pottery shall bear the expenses of return shipping such goods. Jersey Pottery shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- C. Jersey Pottery shall not be liable for Goods' failure to comply with the warranty set out in Paragraph A, above, in any of the following events:
  - 1. the Customer makes any further use of such Goods after giving notice in accordance with Paragraph B, above;
  - 2. the defect arises because the Customer failed to follow Jersey Pottery's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or, if there are none, standard trade practices regarding the same;
  - 3. the defect arises as a result of Jersey Pottery following any drawing, creative direction or design supplied by the Customer;
  - 4. the Customer alters or repairs such Goods without the written consent of Jersey Pottery;
  - 5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 6. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

Except as provided in this Section IV, Jersey Pottery shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Paragraph A above. The terms of this Section IV shall apply to any repaired or replacement Goods supplied by Jersey Pottery.

V. TITLE AND RISK

- A. The risk in the Goods shall pass to the Customer upon Jersey Pottery's delivery of the Goods to the Delivery Location.
- B. Title to the Goods shall not pass to the Customer until Jersey Pottery receives payment in full (in cash or cleared funds) for the Goods and payment for any other goods that Jersey Pottery has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- C. Until title to the Goods has passed to the Customer, the Customer shall:
  - 1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Jersey Pottery's property;
  - 2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 3. notify Jersey Pottery immediately if it becomes subject to any of the terminating

events set forth in Section VIII; and

4. give Jersey Pottery such information relating to the Goods as Jersey Pottery may require from time to time.
- D. If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the terminating events listed in Section VIII, then, without limiting any other right or remedy Jersey Pottery may have, Jersey Pottery may: (a) immediately terminate the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and (b) Jersey Pottery may require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product. If the Customer fails to do so promptly, Jersey Pottery may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

VI. PRICE AND PAYMENT

- A. The price of the Goods shall be the price set out in the Order or Order Acceptance. If no price is quoted on the Order or Order Acceptance, the price for the Goods shall be the price set out in Jersey Pottery's published price list in force at the date of Order.
- B. The price of the Goods is exclusive of the costs of shipping, transport and insurance for the Goods, and any and all applicable sales tax, which costs shall be included on the Order Acceptance or on an invoice accompanying the Goods at delivery. Customer, shall pay to Jersey Pottery such additional amounts within fifteen (15) days of receipt of an invoice therefor. Payment shall be made to the Jersey Pottery's bank account nominated in writing by Jersey Pottery on the invoice or Order Acceptance. Time of payment is of the essence.
- C. If Customer fails to make any payment due to Jersey Pottery as stated on the Order Acceptance or on any invoice included with the Goods, Customer shall pay interest on the overdue amount at a rate of 5% (five percent) per annum. Such interest shall accrue on a daily basis from the due date until actual payment has been made. Customer shall pay the interest together with the overdue amount.
- D. Customer shall pay all amounts due under the Order, Order Acceptance or invoice in full without any set-off, counterclaim, deduction or withholding, except as required by law. Jersey Pottery may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Customer against any amount payable by Jersey Pottery to Customer.
- E. Should Customer have any outstanding invoices more than thirty (30) days old, Jersey Pottery has the right to refuse to fulfill future Orders submitted by Customer and/or to send Goods to Customer under an existing Order.
- F. Subject to the agreement of Jersey Pottery, payment may be made by credit card processed on Jersey Pottery's website. If payment is made by PayPal, Jersey Pottery reserves the right to charge an additional 3% of the price of the Goods.
- G. Should Jersey Pottery be required to initiate legal proceedings against Customer for collection of past due amounts, Customer shall be required to pay any and all reasonable legal costs, including but not limited to Jersey Pottery's attorneys' fees, to collect such past due amounts.

VII. INTELLECTUAL PROPERTY

- A. Any and all of the designs, images, artwork, illustrations and other creative works ("Works") contained on the Goods is the intellectual property of Jersey Pottery. Customer acknowledges Jersey Pottery's ownership of the intellectual property in and to

the Works and will not do or suffer to be done, any act or thing which will in any way impair, limit or damage the rights of Jersey Pottery in and to its intellectual property.

- B. The trademarks used on or in connection with the Goods, including but not limited to, Jersey Pottery, are owned by Jersey Pottery and Customer acknowledges Jersey Pottery's ownership of such trademarks. Any and all uses of Jersey Pottery's name and trademarks by Customer shall be undertaken in a manner that does not damage in any way Jersey Pottery's name, brand or reputation. Customer shall comply with Jersey Pottery's instructions regarding the use of the Jersey Pottery name, brand or trademarks. Should Customer refuse to follow Jersey Pottery's instructions as to its use of the Jersey Pottery name, brand or trademarks, Jersey Pottery may require Customer to cease any and all sales of the Goods and/or use of the Jersey Pottery names, brand or trademarks.
- C. Jersey Pottery's name, brand and/or trademarks and other intellectual property rights may not be used or permitted to be used by the Customer on the internet without Jersey Pottery's express written permission, which it may withhold at its sole discretion. This paragraph does not prevent the internet advertising of the availability for sale of the Goods for purchase by personal attendance at a traditional brick and mortar retail store or outlet owned by Customer.

#### VIII. TERMINATION

- A. This Agreement shall terminate upon the earliest of the following dates or occurrences: (1) Customer becomes insolvent or files for bankruptcy, or Jersey Pottery becomes aware that Customer is intending or planning on filing for bankruptcy; (2) Customer suspends or threatens to suspend payment of its debts or is unable to pay its debts as they become due, or admits inability to pay its debts; (3) Customer uses Jersey Pottery's name, brand or trademarks in a manner that is inconsistent with Jersey Pottery's policies; (4) Customer fails to pay Jersey Pottery's invoices in a timely fashion, pursuant to Section VI; (5) Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; (6) Customer sells, transfers or assigns a substantial part or portion of its business; (7) Customer's reputation as a business is denigrated by Customer's actions, or Customer becomes a "discount" store; or (8) Customer otherwise breaches this Agreement and fails to cure such breach after written notice of such breach by Jersey Pottery within sixty (60) days of such notice.
- B. Upon termination of this Agreement, Customer shall immediately pay to Jersey Pottery all of Jersey Pottery's outstanding invoices and interest.
- C. Termination of this Agreement shall not affect the Parties' rights, remedies, obligations and liabilities that have accrued as of termination.
- D. Terms of this Agreement that expressly or by implication survive termination of this Agreement shall continue in full force and effect. Sections II, VI, VII, VIII and X shall survive the termination of this Agreement.

#### VIII. INDEMNIFICATION

- A. Jersey Pottery agrees to indemnify and hold Customer, its directors, officers, employees and agents harmless from and against any and all causes, claims, damages, liabilities and related expenses, including reasonable attorneys fees, incurred by or asserted against either party to this Agreement, or arising out of, in any way in connection with or as a result of any claim, suit, litigation, investigation or proceeding relating to any third party claims for (a) copyright, trademark or other intellectual property infringement claims arising out of Jersey Pottery's use and/or claim of ownership of the Works or other intellectual property; and (b) any claims of defective manufacture, design or other product liability claims.

- B. Notwithstanding Paragraph A above, Jersey Pottery shall under no circumstances whatsoever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit or any indirect or consequential loss arising under or in connection with this Agreement.
- C. Jersey Pottery's total liability to Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

IX. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

X. GENERAL

A. **Notices**

All notices and payments shall be forwarded to the respective parties at the following addresses:

**If to Jersey Pottery:**

Contact:

Address:

Phone:

Fax:

Email:

**If to Customer:**

Contact:

Address:

Phone:

Fax:

Email:

Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its above-identified office or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first class U.S. mail, delivery service (such as Fed Ex or UPS), commercial courier, fax or e-mail.

A notice shall be deemed to have been received if delivered personally, when left at the address referred to in this Section X if sent by pre-paid first class U.S. mail, on the second business day after sending; delivery service, at 9:00 am on the second business day after sending; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.

**B. Relationship Between the Parties**

Neither party shall have the right to bind the other to any contract or agreement and nothing in the relationship is intended to create a joint venture or partnership between the parties. Customer shall have no authority to accept orders on Jersey Pottery's behalf, to contract in Jersey Pottery's name, or to take any other action on Jersey Pottery's behalf except as expressly agreed to and authorized in writing by Jersey Pottery.

**C. Applicable Laws**

This Agreement shall be governed exclusively by the laws of the State of New York, United States. The parties agree to the exclusive jurisdiction of the Courts of the State of New York for the resolution of any disputes arising hereunder.

**D. No Assignment**

Customer may not assign, transfer, license, sublicense, contract, or subcontract any of its rights and/or obligations hereunder without Jersey Pottery's express permission in writing. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

**E. Single Agreement**

The parties agree that the terms of this Agreement shall exclusively govern the relationship of the parties in connection with the subject matter hereof. The parties contemplate that from time to time they may exchange purchase orders, order confirmations or other documentation in furtherance of the relationship described herein. The parties expressly agree that the following documents, in this order, govern the relationship between the parties: First, the terms on the face of the Purchase Order, then the terms and conditions on the reverse, or attached to the Purchase Order, then the terms of this Agreement, and then any additional written agreements between the parties.

**F. Severance**

Any part or provision of this Agreement which is held to be unlawful or unenforceable shall be severed from this Agreement and shall not affect the legality or enforceability of the balance of this Agreement. If any provision or term of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**G. Waiver**

Failure of either party at any time to require the performance of any provision of this Agreement shall not affect the right of such party to require full performance thereafter. A waiver by either party of a breach of any provision of this Agreement shall not operate as a waiver of any further or similar breach or as nullifying the effectiveness of such provision.

**ACCEPTED AND AGREED:**

**Jersey Pottery USA, Inc.**

**Customer** (Insert Company Name)

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_