

**GENERAL TERMS:**

1. Eberlestock dealers and distributors ("BUYER") are subject to the following terms and conditions ("TERMS").

**** The act of placing an order for Eberlestock goods and/or services by a BUYER expressly indicates an acceptance of these TERMS. ****

Any deviation from these TERMS shall not be binding unless acknowledged in writing by an authorized representative of Eberlestock USA LLC (together, with its affiliates and/or subsidiaries, "SELLER"). BY PLACING AN ORDER FOR GOODS AND/OR SERVICES FROM SELLER, BUYER CONFIRMS THAT IT UNDERSTANDS, ACCEPTS AND AGREES TO BE BOUND BY THESE TERMS. [BUYER and SELLER, together, are the "PARTIES"].

2. A waiver to a breach of any term or condition shall not be deemed a waiver of similar terms or conditions in the future.

3. These TERMS constitute an offer by SELLER to sell goods to BUYER and shall supersede any terms or conditions contained in BUYER'S purchase order. SELLER'S acceptance of any order is limited to these TERMS. SELLER objects to any additional or different terms which may be contained in any of BUYER'S purchase orders, acknowledgment or other forms or correspondence. Except as otherwise expressly agreed by SELLER in writing, these TERMS, when accepted by BUYER explicitly, by acceptance of goods or services or otherwise, shall constitute the entire agreement between SELLER and BUYER on the subject hereof, superseding all prior oral or written communications and negotiations.

4. **ACTIVE STATUS AND DEALER AGREEMENT:** If BUYER has a fully executed Authorized Dealer Agreement currently in effect with SELLER, that Agreement shall govern in the event of a conflict with these TERMS. All other TERMS herein shall apply. BUYER agrees to place a minimum amount of orders in excess of \$5,000 per year in order to maintain active Authorized Dealer status. Inactive Dealers will be required to fulfill all new-dealer requirements in order to regain active status.

5. **BANK FEES:** Any and all fees that happen outside of the counters of the SELLER'S bank resulting from BUYER'S payment by electronic money transfer shall be the responsibility of the BUYER.

6. **CANCELLATION / CHANGE / BACKORDER:** 1) BUYER'S purchase order is not subject to cancellation, change, reduction in amount, suspension or deferment of deliveries except with SELLER'S written consent and upon terms which indemnify SELLER against loss. Custom orders are not subject to cancellation or termination. 2) Backorders will be shipped by default upon first availability, with shipping costs borne by BUYER, unless otherwise requested by BUYER.

7. **CREDIT:** 1) All Terms are subject to credit approval. 2) Unless otherwise agreed by SELLER, payment is due in U.S. dollars. If BUYER fails to make payments when due, SELLER may at its option, cancel the unshipped balance of any order and seek other remedies in equity or law. 3) Orders received from buyers with delinquent accounts will not be shipped until overdue balances have been paid. A service charge of 1.5% per month will be added to all past due amounts. 4) BUYER shall reimburse SELLER for any costs incurred in collection of amounts owed, including reasonable attorneys' fees and costs.

8. **DELIVERY:** Delivery dates are quoted in good faith, but are not guaranteed. SELLER cannot assume any risk or liability for delay or nonfulfillment of shipments due to acts of God, war, strikes, breakdown, fires, government orders, or other causes beyond SELLER'S control.

9. **DESIGN CHANGES:** Except as otherwise agreed expressly between the PARTIES, SELLER may at any time furnish goods that include changes in design and construction of such goods as shall constitute an improvement in the judgment of SELLER. SELLER may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

10. **DISTRIBUTION AND GENERAL RIGHTS:** 1) These TERMS are not a distribution, franchise, agency or supply agreement and confer no rights to exclusivity upon BUYER. Neither party is bound to effect any purchase or sale of any of SELLER'S products except to the extent BUYER places, and SELLER accepts, an order in accordance with these TERMS. 2) Sales to BUYER are for purposes of direct BUYER-to-consumer onward sale. [BUYER agrees that it shall not act as a wholesale distributor to other parties or subsidiaries](#) without written permission from SELLER. [BUYER agrees that it WILL NOT sell Eberlestock products on THIRD PARTY WEBSITES \(eg. Amazon.com\)](#) without written permission from SELLER. BUYER agrees to fully disclose all sales channels, including all websites and subsidiary names or alter-egos used by the BUYER to sell and promote Eberlestock branded products. Failure to adhere to these provisions will result in the loss of Authorized Eberlestock Dealer status.

11. **GEOGRAPHIC MARKETS:** Unless otherwise specified, the BUYER is authorized to sell Eberlestock branded products within one contiguous nationality in which BUYER is licensed to do business. Licenses for sales into other countries or regions will only be granted by separate written agreement between the BUYER and SELLER. Cross-border sales that interfere with other distributors' granted markets will be grounds for termination of the BUYER'S license to sell Eberlestock products.

12. **ERRORS AND OMISSIONS:** SELLER reserves the right to correct clerical errors and omissions.

13. **GOVERNMENT REGULATIONS:** 1) Manufacture, shipment, and delivery are subject to any prohibition, restriction, priority, allocation, regulation or condition imposed by, or on behalf of, the United States. 2) BUYER agrees that it shall comply with all applicable import, export, and anticorruption statutes and regulations of the United States, including without limitation, the Foreign Corrupt Practices Act. BUYER agrees to indemnify and hold harmless SELLER from all claims, demands, damages, costs, fines, penalties, attorneys' fees and all other expenses arising from BUYER'S failure to comply with this provision and/or applicable export control laws and regulations.

14. INTELLECTUAL PROPERTY & INDEMNIFICATION: 1) Nothing herein is intended to grant any rights to BUYER under any patent, trademark, trade secret, or copyright of SELLER. BUYER shall acquire no rights or interests in any of SELLER's products, property, or intellectual property. 2) These TERMS, prices, and data contained in a quotation or describing SELLER'S products or processes are proprietary and shall only be disclosed to members of BUYER'S organization with a need to know. They shall not be disclosed beyond the direct purview of the BUYER. Upon request BUYER shall return any printed or software based proprietary data to SELLER. 3) If SELLER manufactures an item to specifications furnished by BUYER, and/or containing a trademark, trade name, logo, or other marking furnished by BUYER, BUYER shall indemnify and hold SELLER harmless from and against any and all loss, damage, settlement or expense (including legal expenses), incurred, resulting from or arising out of (a) claims that any such items, the use or sale thereof, infringe upon, misappropriate or violate any patents, copyrights, or trade secret rights or other proprietary rights of any persons, firm or entities; or (b) claims by a third party, for warranty, breach of contract, product liability or any other claim or cause of action, arising from or related to BUYER's specifications.

15. SUBMISSION TO JURISDICTION & VENUE; GOVERNING LAW: 1) Any action or proceeding to enforce any provision of, or based on any right arising out of, this agreement shall be brought in the state or federal courts located in Idaho, and each of the parties consents to the exclusive jurisdiction of such courts in any such action or proceeding and waives any objection to venue, including any defense of inconvenient forum. A final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity. 2) This Agreement shall be governed by the laws of the State of Idaho without giving effect to any choice or conflict of law principle, provision or rule, whether of Idaho or any other jurisdiction that would cause the application of the laws of any jurisdiction other than Idaho. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement. (Notwithstanding the preceding provisions of this paragraph, if the goods subject to these TERMS are sold to a customer in Australia, this agreement shall be governed by the United Nations Convention of the International Sale of goods).

16. LIMITATION OF ACTION; JURY WAIVER: 1) Except for claims arising from BUYER's non-payment or underpayment of amounts owed to Seller, any and all claims arising out of or related to this Agreement, or any agreement related to this Agreement or executed concurrently with this Agreement, or the relationship of the parties shall be barred unless a judicial proceeding is commenced within one (1) year from the date the complaining party knew or should have known of the facts giving rise to such claim, or the statute of limitations applicable to that claim under Idaho law, whichever is shorter. 2) SELLER AND BUYER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, ARISING UNDER THIS AGREEMENT.

17. PRICING: 1) Prices quoted are valid for thirty (30) days from date of quotation unless otherwise stated. 2) BUYER agrees to participate in SELLER's Minimum Advertised Price (MAP) program. Eberlestock MAP means that ADVERTISED retail prices shall be equal to the published Manufacturer's Suggested Retail Price (MSRP), as listed on Eberlestock price lists and on the Eberlestock website at www.eberlestock.com. BUYER understands and agrees that public below-MAP sales will result in the loss of Authorized Eberlestock Dealer status. 3) Each Eberlestock Dealer is allotted one (1) two-week window per calendar year wherein the Dealer is permitted to promote a "Sale" of Eberlestock products. Advance Notice of at least 10 days must be given to SELLER prior to the commencement of an authorized Sale.

****An authorized "Sale" can only take place on dealer's own website or in its retail store(s).****

18. RETURNS: Returned goods will not be accepted without SELLER's authorization, and are subject to a 15% restocking fee. Custom goods may not be returned.

19. SECURITY INTEREST: BUYER grants to SELLER a security interest in the goods sold until BUYER has completed payment of the purchase price, plus accrued interest, and fully performed all terms hereof. BUYER agrees to execute and deliver such financing statements as SELLER may reasonably consider appropriate to perfect its security interest. SELLER may file this agreement as a financing statement.

20. SEVERABILITY: If any of the provisions of these TERMS are held by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these TERMS, so that these TERMS shall remain in full force and effect.

21. SHIPPING AND FEES: 1) BUYER should specify freight carrier and any value declarations. Lacking such instructions SELLER shall use discretion without incurring any liability. 2) All orders are shipped FOB Boise, Idaho, or location of manufacturer, unless otherwise specified. All orders shipped most economical way. Charges to be added to invoice. Risk of loss of the goods shall pass to BUYER at the time the goods are tendered for shipment. Any damaged freight or missing items claim must be made directly to carrier on P.O.D. 3) SELLER will charge a "Drop Ship" fee on any shipment to any location that is not a customer owned "Sold To" facility/business or a valid associated business location or sub-branch. Drop Ship Fees will be 5% of the pre-tax (net) sales order amount with a minimum charge of \$15 and a maximum charge of \$200 per order.

22. TAXES: SELLER'S prices exclude any applicable taxes.

23. TERMS: When SELLER extends credit to BUYER: unless otherwise stated, terms are net thirty (30) days. Cash discounts, if any, shall not be allowed on tax or freight charges. BUYER shall pay from invoice; SELLER does not send monthly statements other than at its discretion. All discounts and freight allowances are void if invoice is not paid by due date. A 1-1/2% per month service charge will be added to all past due accounts. If a credit card is maintained on file to backup BUYER's credit, then BUYER acknowledges that SELLER is authorized to charge amounts outstanding beyond the credit term to the credit card on file.

24. WARRANTIES AND LIMITATION OF REMEDIES: 1) The warranty and limitation of remedies applicable to the goods sold pursuant to these Terms are set forth at http://www.eberlestock.com/warranty_and_returns.htm, and hereby incorporated by reference. THOSE WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED. SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. 2) To the extent permitted by law, including Australian Consumer Law §§ 64A AND 276A, where applicable, SELLER will not be responsible for any harm arising out of BUYER's purchase, possession, or use of any product supplied by SELLER. 3) IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, CLAIMS OF THIRD PARTIES, OR INJURY TO PERSONS OR PROPERTY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Eberlestock USA LLC
2900 W. Main St.
Boise, Idaho 83702 USA
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