

## CATERING TERMS AND CONDITIONS

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#### Ecommerce Events

CATERER. Caterer includes 3T Culinary Inc. d/b/a Three Tomatoes Catering, Cowtown Barbeque Catering, and any and all subsidiaries, affiliated entities or subTerms and Conditionsors that may provide services pursuant to this Agreement.

CLIENT. Client means the individual or organization specified in this Terms and Conditions, located at the address specified in this Terms and Conditions, being represented by the signer of this Terms and Conditions.

CONSENT. In order to secure the Caterer's services, Client must express agreement with Caterer's Terms and Conditions by processing the deposit payment online. By processing the payment online, Client expresses to have read, understood, and agreed to Caterer's Terms and Conditions.

EVENT. The Terms and Conditions herein shall govern the services to be provided by Caterer to Client for the event as described in this Terms and Conditions. This Terms and Conditions shall include the Event date ("Event Date"), commencement time ("Event Time"), and venue location ("Event Venue").

GUEST COUNT. If Caterer charges are based on the number of guests attending, the guaranteed number of guests for the Event shall be set forth in this Terms and Conditions. Client agrees to provide a final Guest Count no later than ten (10) business days prior to the Event Date. For multiple-day events, Client shall provide the final Guest Count to Caterer no later than thirty (30) days prior to the first Event Date.

RENTALS AND EVENT DÉCOR. All necessary equipment, furniture, linens, dishes, china, flatware, glassware, service items and event décor, and any other ancillary services required for the Event, may be coordinated, arranged and provided by Caterer. The cost of rentals, event décor and other services provided will be included in the estimated total cost or billed as part of the Final Invoice, along with a management service fee. Any loss or damage to any rentals will be billed to Client as part of the Final Invoice. Client may select his/her/its own rental service provider, in which case Client will be billed directly by the rental service provider. If Client provides his/her/its own equipment, furniture, linens, dishes, china, flatware, glassware, service items or event décor, Caterer will not be held responsible for loss, cleaning, damage, or breakage. Client agrees that Caterer shall not be held liable, and no portion of payment will be refunded, in the event any equipment and furniture provided by Client fails to work and impacts the quality of the food or services provided by Caterer.

ALCOHOLIC BEVERAGES. Colorado law prohibits catering companies from buying and reselling alcoholic beverages or obtaining liquor licenses for events. Client may order alcoholic beverages and arrange for delivery from a local liquor supplier of his/her/its own choosing, or Caterer will suggest and coordinate delivery with a liquor supplier at Client's request. Client will be billed directly by the liquor supplier. Client assumes all liability for obtaining all necessary liquor licenses for the Event where any alcoholic beverages are served by Caterer. After the Event, Client must take possession of any remaining liquor, whether bottles are open or unopened. Client assumes all responsibility for the actions and conduct of all guests at the

Event related to alcohol consumptions. Caterer will not be liable for any damages arising from the intoxication of the Client or guests and reserves the right not to serve alcoholic beverages to minors, visibly intoxicated persons, or to any person whose condition of habitual intoxication is known to Caterer's staff.

VENUE COSTS. Client is solely responsible for all costs and/or deposits related to the use of the Event Venue and for obtaining any necessary permissions, authorizations, or other requirements of Caterer necessary for providing catering services at the Event Venue.

SET-UPS AND FLOOR PLANS. Caterer reserves the right to approve, and make changes to, all floor plans and layouts of the Event areas where Caterer's services are to be provided, as deemed necessary in Caterer's sole reasonable discretion, to enable the safe and efficient conduct of Caterer's services by staff. Without limiting the generality of the foregoing, Caterer reserves the right to specify the locations and configuration of all décor, tables, buffet and service stations, aisles, and staging and breakdown areas.

CLIENT REPRESENTATIONS AND WARRANTIES. Client agrees, warrants and represents that he/she/it has carefully reviewed all parts of this Agreement and that he/she/it (a) has provided an accurate description of the Event, including its purpose, location, the facilities available to Caterer at the location, the Guest Count or number of people expected to attend, and the period of time that catering services are to be provided; (b) approves of the quantities of food and labor estimates set forth in the Terms and Conditions and represents that the quantities and services described shall be sufficient and appropriate for the Event; (c) has provided or will provide Caterer with information about any expected guests with special dietary needs or food allergies; and (d) has procured any and all permits and approvals necessary for the Event that may be required by the Event Venue or local, state or federal laws or regulations.

LEFTOVER FOOD AND HEALTH/SAFETY. Caterer shall dispose of any leftover or unused food items in accordance with applicable health codes and regulations. Caterer reserves the right to discard any food items after the Event if they pose a reasonable risk of illness. In accordance with appropriate health codes and regulations, consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase the risk of foodborne illness. It is the Client's responsibility to obtain and follow reheating instructions for left-over food from Caterer. Also the Client assumes full responsibility for handling and consuming the food provided by Caterer. The Client relieves Caterer of any responsibility relating to food-related or service-related illness and to any other safety or health issue if/when the food and service are delivered and provided to the Client and guests.

INSURANCE. If required by the Event Venue, Client shall purchase or maintain and shall provide to Caterer on or before the Event Date, a certificate evidencing comprehensive general liability insurance at limits specified by the Event Venue for bodily injury and property damage. All policies shall include Caterer as an additional insured for the time period of the Event. Failure to carry the required insurance coverages shall not relieve Client of its responsibility for losses and liabilities under this Agreement. Caterer shall maintain at all times during the Event a certificate evidencing comprehensive general liability insurance with limits of liability of \$1,000,000 per occurrence for bodily injury and property damage. Additionally, Caterer shall carry applicable worker's compensation and comprehensive automobile liability insurance at the statutory minimum limits or higher. Failure to carry the required insurance coverages shall not relieve Caterer of its responsibility for losses and liabilities under this Agreement.

EXCLUSIVE PROVIDER OF FOOD AND CATERING SERVICES. No food or beverages, other than alcoholic beverages as provided in the Terms and Conditions, may be brought into the Event for any purpose without the prior written consent of the Caterer.

ACCOMMODATIONS OF DIETARY RESTRICTIONS. If any of Client's guests require accommodations for dietary restrictions Client will notify Caterer at least 15 days prior to the Event Date of any such dietary restrictions and Caterer agrees to provide accommodations for such guests and provide appropriate alternatives to satisfy such restrictions. Notification for any kosher meals must be provided no later than four (4) days prior to the Event Date. Notwithstanding the foregoing, if Client provides the required notification and Caterer is unable to accommodate the dietary restrictions, Caterer and Client shall mutually agree upon possible alternatives for outside food and beverage accommodations for any specific guests with dietary restrictions.

CONFIDENTIALITY. The information and pricing contained in this Agreement is specific to the Client's request for a proposal. The information provided herein by the Caterer is confidential, proprietary and not generally known or available to the public, and is therefore a trade secret under the Colorado Uniform Trade Secrets Act. Client agrees not to share any of the details of this proposal, either orally or in written form, to any person outside the Client's organization or immediate family members. Client agrees that a breach of this provision would cause immediate and irreparable harm to Caterer and that Caterer may seek injunctive relief or pursue any legal remedy available to it in a court of competent jurisdiction should Caterer's confidential and proprietary information be disclosed or misused. This provision shall survive termination of this Agreement.

NOTICE OF DISSATISFACTION. In the event Client is dissatisfied with any services provided by Caterer, including but not limited the quantities, quality or presentation of the food, beverages or services provided, Client agrees to give written notice to Caterer of the dissatisfaction within 72 hours from the end of the event. Client agrees that failure to provide such notice constitutes acceptance, accord and satisfaction with all services provided by the Client and that all services have been completed in accordance with the specifications set forth in this Agreement.

FORCE MAJEURE or GOVERNMENT ACTION. Neither Caterer nor Client shall be responsible for any losses or damages of any kind resulting from their respective non-fulfillment of any terms or conditions of this Terms and Conditions if such non-fulfillment results in whole or in part from war, riot, strike, flood, government action or decision, or any other act or occurrence beyond its control; provided, however, that in the event of non-fulfillment by the Client, Caterer may recover its actual costs incurred in preparing for the Event, which amounts may be retained by Caterer from deposits and prepayments, and Client shall be entitled to the remaining balance, if any.

INDEMNIFICATION. (a) Client shall indemnify, defend (with counsel acceptable to Caterer), and hold harmless Caterer, and each of its respective affiliates, subsidiaries, officers, directors and employees from and against any and all demands, claims, suits, cause or causes of action, whether at law or in equity, costs, expenses, and reasonable attorneys' fees for bodily injury (including death) or property damage caused by, growing out of, or happening in connection with the gross negligence or willful misconduct of Client, Client's guests or agents, or use of equipment by Client, Client's guests or agents. (b) Caterer shall indemnify, defend (with counsel acceptable to Client), and hold harmless Client, and each of his/her/its respective affiliates, subsidiaries, officers, directors and employees from and against any and all demands, claims, suits, cause or causes of action, whether at law or in equity, costs, expenses, and reasonable attorneys' fees for bodily injury (including death) or property damage caused by,

growing out of, or happening in connection with the gross negligence or willful misconduct of Caterer, Caterer's employees or agents.

LIMITATION OF LIABILITY. Notwithstanding anything contain herein to the contrary, in the event of any claim in respect of this Agreement or the services rendered by Caterer hereunder, each Party's liability to the other party shall be limited to the lesser of: (a) the actual, direct damages, if any, incurred by such party; or (b) the sum of the charges paid or payable by Client to Caterer for the services contemplated, regardless of the basis upon which liability is asserted. For any claims asserting bodily injury, including death, to any person, damages shall be limited by clause (a) and not clause (b) above. Without limiting the generality of the foregoing, in the event of any claim on the basis that Caterer failed to provide any products or services of the quantity, or type, or at the level of quality or timeliness or temperature required, Caterer's liability to Client shall be limited to a refund only of those amounts actually paid by Client to Caterer for the specific products or services affected. Such remedies shall be the sole and exclusive remedies available to the Parties hereto. In no event shall either Party be liable to the other for any lost profits or opportunity of such other Party (regardless of whether a Party is advised of same), consequential, special, or punitive damages.

NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement is intended to or shall be deemed to confer to a third party beneficiary rights upon any person, firm, or corporation whatsoever.

INDEPENDENT TERMS AND CONDITIONSOR. This is an Agreement between separate legal entities and does not create a partnership, agency, or joint venture. Neither Party is the agent nor employee of the other for any purpose, and neither party shall have the right to bind the other or to incur any obligation or liability on behalf of the other, except as specifically provided herein.

AMENDMENTS. Any changes to this Agreement must be made in writing and signed by both Parties to be effective.

COUNTING OF DAYS. Whenever this Agreement makes reference to a certain number of days, it is referring to calendar days, unless it specifically references "business days," in which case the counting of days will exclude Saturdays, Sundays, and all holidays when the offices of U.S. federal agencies are closed.

CHOICE OF LAW, VENUE, ATTORNEYS' FEES. This Agreement shall be governed and construed by the laws of the State of Colorado, without regard to its conflict of laws rules or doctrine. Any controversy, claim or dispute arising out of or relating to this Agreement shall be brought in any court of competent jurisdiction in the State of Colorado. The prevailing party in any action brought by either Party shall be entitled to recover costs and reasonable attorneys' fees.

ENFORCEABILITY. If any provision of this Agreement is unenforceable under applicable law, the remaining provisions shall continue in full force and effect.

AUTHORITY. Each person authorizing this Agreement on behalf of Client represents that he or she has full authority to legally bind Client, and such person(s) shall be jointly and severally liable for all amounts owing if such representation is untrue.

ASSIGNMENT. Client may not assign this Agreement or any of his/her/its rights hereunder without the prior written consent of Caterer. Caterer may not assign this Agreement or any of Caterer's rights hereunder without the prior written consent of Client, except in the case of an assignment to a subsidiary or affiliate entity of Caterer.

**BINDING EFFECT.** This Agreement shall be binding upon the Parties hereto, and their respective heirs, administrators, executors, agents, and permitted successors and assigns.

**WAIVER.** If one Party agrees to waive his/her/its right to enforce any term of this Agreement, that Party does not waive his/her/its right to enforce such term at any other time or to enforce any or all other terms of this Agreement.

**INTEGRATION.** This Agreement states the entire agreement of the Parties with regard to the matters described herein and supersedes all previous agreements, oral or written, and may only be amended by mutual written agreement of the Parties.

## **CHARGES, FEES, AND PAYMENTS**

**PAYMENTS.** To reserve an Event Date Client must submit a deposit payment for the \$ amount specified in the online quote. Out of this deposit, \$990 is non-refundable. If this deposit is less than \$990, the entire deposit is non-refundable. The remainder of the estimated total cost, as well as final Guest Count, shall be due ten (10) business days prior to the Event Date. In the event any additional charges accrue on or after the date the Estimated Total Cost is fully paid, Caterer will submit a Final Invoice to Client after the Event Date, which must be paid within two (2) business days of receipt. Caterer, in its sole discretion, reserves the right to require a non-refundable fee to hold the Event Date, which fee shall be set forth in the Terms and Conditions. For final payment and any other balance due Client authorizes Caterer to charge the selected payment method on file.

**ESTIMATED TOTAL COST.** The estimated total cost for food and services that Caterer agrees to provide to the Client for the Event is set forth in this Terms and Conditions and online quote, as may be amended upon Client's request ("Estimated total cost"). Client agrees to pay the Estimated total cost and any other charges invoiced under the following terms and conditions. The Estimated total cost for the Event may be adjusted with amendments to food quantities or services agreed to by the Client and Caterer up until ten (10) business days before the Event Time, at which point any unpaid balance of the Estimated total cost shall be due. If, after ten (10) business days prior to the Event Time, Client agrees in writing that Caterer shall provide additional food or services not, charges for the additional food items and services provided will be included in the Final Invoice. Caterer shall also include in the Final Invoice additional labor charges should the length of the Event exceed the time agreed upon. Client agrees to pay the Final Invoice within two (2) business days of receipt. If, after five (5) business days prior to the Event Time, Client increases the Guest Count, Caterer shall include in the Final Invoice charges equal to one and a half (1 ½) times the per-person or food unit costs and any other applicable labor or service costs for those additional guests. Caterer reserves the right to count the actual number of guests who attend the Event and charge accordingly if the actual count exceeds the final Guest Count provided by Client. Client shall be charged for the final Guest Count even if the actual number of guests who attend the Event is fewer.

**LABOR AND SERVICE CHARGES.** If labor charges are itemized, separately applied and listed in the total estimated cost, service time and labor charges are set forth in this Terms and Conditions. The estimated labor time is based on a "portal-to-portal" calculation, which includes the time spent loading and unloading Caterer's vehicles before and after the Event. Client agrees that labor charges set forth in the Terms and Conditions are the minimum charges due, and no portion of the charges will be refunded if the actual time period for the Event is less than the time period agreed upon or if the amount of labor provided (e.g., number of staff

members) is less provided that the quality of the service is not adversely impacted and remains in accordance with generally accepted industry standards. Should the time period for the Event exceed that agreed upon, Caterer shall charge for the additional time in the Final Invoice.

ADMINISTRATIVE FEE. An administrative fee shall be included in the estimated total cost and shall be applied to any additional invoiced charges due at the end of the Event (“Administrative Fee”). The Administrative Fee is a standard catering industry charge that applies to all charges to cover some of the Caterer's fixed overhead costs and other items. The Administrative Fee does not represent a tip, gratuity or service charge for employees engaged in the Event. While Caterer's staff are compensated and do not expect a tip or any additional gratuity, any tip or gratuity voluntarily provided by Client is perfectly acceptable and will be graciously received.

SALES TAXES. Sales tax shall be applied to all charges and added to the final invoice at the rate applicable based on the location of the Event Venue. If Client's Event is tax exempt, Client must provide all tax exception documentation required by the local authorities including Affidavit of Non-Taxable Sale to Caterer prior to the Event Date to be eligible for tax exception.

FLUCTUATING FOOD COSTS. Due to the fluctuating cost of food items, menu prices are subject to change. Caterer agrees to give notice to Client of any increase in food costs no later than ten (10) days prior to the Event date. Client agrees to pay any increase in food costs or, alternatively, may substitute other menu items to maintain the agreed-upon estimated total cost.

FEES AND UNPAID BALANCES. Caterer shall charge a \$50 fee for any returned check. For payments, convenience fees may apply. A monthly finance charge of three percent (3%), or the maximum amount allowed under Colorado law, whichever is less, will be assessed for any unpaid final balance not paid within seven (7) days of invoice receipt and on any unpaid balance every thirty (30) days thereafter. Interest shall accrue as of the date of the final invoice. If an unpaid balance exists after ninety (90) days of invoice receipt, Caterer reserves the right to pursue collection in a court action and Client agrees that Caterer shall be entitled to collect all costs and fees, including reasonable attorneys' fees, related to Caterer's collection efforts and court action. If Client pays electronically and disputes a charge or requests a chargeback, reversal, or partial reversal of a payment, Caterer reserves the right to pursue collection of the payment, or any other remedy allowed by law or equity, in a court action irrespective of the credit card company's decision on whether to reverse the payment. Client agrees to reimburse Caterer for all fees and charges incurred in any chargeback action and Caterer shall be entitled to recover interest on the unpaid balance as set forth herein. If more than one Client is a party to this Agreement, then Clients shall be liable jointly or severally.

OTHER. All parking fees incurred by Caterer and its staff shall be charged to the Client. If the Event Venue is located more than 50 miles from Caterer's main office located at 2520 W. 29th Avenue, Denver, Colorado 80211, Caterer shall charge for mileage at \$0.60 per mile.

## CANCELLATION POLICIES

CANCELLATION OR CHANGE OF EVENT DATE. In the event Client cancels the Event, Client agrees to provide to Caterer written notice of cancellation at least thirty (30) days prior to the Event date (“Notice of Cancellation”). Upon receipt of Notice of Cancellation, Caterer agrees to return all deposits and prepayments to Client less any non-refundable fee required to

hold the date of the Event. Should Client provide Notice of Cancellation within thirty (30) days of the Event date, Client agrees that Caterer shall be entitled to keep all deposits and payments, which Client agrees constitute Caterer's reasonable liquidated damages. Should Client change the Event date or the Event venue, Caterer agrees to credit the balance of Client's deposits and payments toward the new Event date and/or venue, provided that Client has given reasonable notice of the Event changes to Caterer and subject to Caterer's availability. Should Caterer be unavailable for the new Event date or unable to provide services at the new venue, the change shall serve as a Notice of Cancellation and the return of any deposits and payments shall be governed as set forth within this provision based on the timing of the notice.

TERMINATION OF TERMS AND CONDITIONS BY CATERER. Caterer reserves the right to terminate this Agreement for any reason or no reason. If Caterer terminates this Agreement at any time prior to the Event Date, all deposits and prepayments will be returned to Client in full within ten (10) business days.