

## PURCHASE ORDER - STANDARD TERMS AND CONDITION, FABRI-KAL CORPORATION

1. **Acceptance.** The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the "Purchase Order"), constitutes the entire and exclusive agreement between Buyer and Seller. Any representation, affirmation of fact, course of prior dealings, promise or condition in connection therewith, or usage of trade not incorporated herein shall not be binding on either party. Seller's acceptance of this Purchase Order shall occur upon the earlier of: (a) Seller's written acknowledgement of this Purchase Order, or (b) Seller's commencement of manufacturing or shipment of goods or performance of services under this Purchase Order. **ACCEPTANCE OF THE PURCHASE ORDER SHALL CONSTITUTE SELLER'S AGREEMENT TO COMPLY WITH AND BE BOUND BY THESE TERMS AND CONDITIONS. ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS IN ANY QUOTATION, BID, ACKNOWLEDGEMENT, OR OTHER DOCUMENT OF SELLER ARE OBJECTED TO BY BUYER AND SHALL NOT BE EFFECTIVE OR BINDING AS TO BUYER, UNLESS AGREED IN WRITING AND SIGNED BY AN OFFICER OF BUYER.**
2. **Delivery.** Time is of the essence of this Purchase Order. If delivery of goods or rendering of services is not completed on time, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this Purchase Order by notice effective when received by Seller, as to stated items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge the Seller, as to stated goods not yet shipped or services not yet rendered, and to purchase substitute goods or services elsewhere and charge the Seller with any loss incurred. Any provisions herein for delivery of goods or the rendering of services by installments shall not be construed as making the obligations of seller severable. Unless otherwise specifically provided, all shipments shall be F.O.B. Buyer's dock or job site, as the case may be. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk.
3. **Force Majeure.** Buyer shall have no liability to Seller for Buyer's failure to perform any of its obligations under this Purchase Order, if such failure arises out of or relates to causes or events beyond Buyer's control.
4. **Price and Set-Off.** Unless otherwise specified in the Purchase Order, prices include all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Price is to cover net weight of materials unless otherwise agreed. In no event will Buyer pay a higher price than as stated on the Purchase Order unless a Purchase Order Change Notice is issued and signed by Buyer. Seller agrees that any price reduction made in merchandise covered by this Purchase Order subsequent to its placement will be applicable to this Purchase Order. Buyer shall be entitled to set off any amount owing at any time from Seller to Buyer or its affiliates against any amount payable at any time by Buyer under this Purchase Order.
5. **Payment Terms.** Unless this Purchase Order states otherwise, payment terms are net thirty (30) days after the later of (a) receipt of Seller's valid invoice, (b) receipt of the goods or services, or (c) the delivery date as stated on the Purchase Order.
6. **Inspection and Acceptance.** Buyer (or Buyer's customer) shall have the right, but not the obligation, to inspect goods and services at times and places designated by Buyer before, during or after delivery or performance. If an inspection takes place at the premises of Seller or its suppliers, Seller shall provide, at Seller's expense, all reasonable facilities and assistance to such inspectors. Seller shall maintain a test and inspection system acceptable to Buyer. If Buyer determines that any goods provided or services performed under this Purchase Order are defective or fail to conform to the requirements of the Purchase Order (including Seller's warranties and covenants under these terms and conditions), Buyer may reject or revoke acceptance of such goods or services and may: (i) terminate all or any part of the Purchase Order; (ii) repair or return such goods to Seller for repair or replacement (at Seller's risk of loss and expense of unpacking, examining, repacking and reshipping); or (iii) retain such goods or services at an adjusted price. These remedies are in addition to any other remedies provided hereunder, at law, or in equity. Payment for any article hereunder shall not be deemed an acceptance thereof.
7. **Changes.** The Buyer reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings and data incorporated in this Purchase Order where the goods to be furnished are to be specially manufactured for the Buyer; (b) methods of shipment or packing; (c) place of delivery; and (d) time of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claims by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by a Purchase Order Change Notice issued and signed by Buyer.
8. **Warranties.** Seller warrants that (i) it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order; (ii) no claim, lien, or action exists or is threatened against Seller that would interfere with Buyer's rights under this Purchase Order; (iii) it has clear title, free of all liens and encumbrances; (iv) all goods and services are new and in strict conformance with the specifications, drawings, samples, designs or other descriptions furnished to or by Buyer, and shall be merchantable, of good quality and workmanship, free from defects in material, design, and workmanship, and fit for Buyer's particular purpose; (v) all services shall be performed in a competent manner in accordance with the requirements of the Purchase Order and fulfill the particular purpose intended; (vi) prices charged herein are as low as any net price now given by Seller to any other customer for similar goods or services, and if at any time during the contract period lower prices are quoted anyone for similar good or services, such lower net prices shall, from that time, be substituted for the prices contained herein; and (vii) products and services specified in this Purchase Order do not infringe any privacy, publicity, reputation or intellectual property right of a third party. These warranties extend to Buyer and to customers and users of Buyer's products or services. The warranty period shall be the longest period provided by applicable law and shall commence on the date of Buyer's acceptance of the goods or services. A new warranty period shall commence from the date of acceptance of any replacement goods or services that are defective or that fail to conform to the requirements of this Purchase Order. Seller's warranties shall survive inspection, acceptance, and payment and shall be in addition to any other warranties of Seller, whether express, statutory or implied. Remedies for breach of these warranties are cumulative and shall include those provided under these terms and conditions and any available at law or in equity.
9. **Termination.** Buyer may terminate all or any part of its purchases under this Purchase Order, without liability to Seller, if Seller: (i) fails to deliver goods or perform services within the time and in the quantities and quality required by Buyer or to give adequate assurances requested by Buyer; (ii) breaches these terms and conditions (including Seller's warranties and covenants); (iii) fails to make progress so as to endanger timely and

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proper performance of the Purchase Order, and such failure is not cured within ten (10) days (or any shorter period which is commercially reasonable under the circumstances) after notice from Buyer; or (iv) ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against the Seller or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller. In addition to obtaining a refund or credit and any other remedies provided herein or available at law or in equity, Buyer may, upon such termination, repurchase substitute goods or services elsewhere, on such terms as Buyer deems appropriate, and charge Seller with any excess costs and losses incurred by Buyer, including consequential and incidental damages. Buyer may terminate all or any part of the Purchase Order for convenience, in which case: (i) Seller shall, as directed by Buyer, cease work and deliver to Buyer all satisfactorily completed goods or materials and work in process; and (ii) Buyer shall pay to Seller reasonable termination charges solely limited to the costs of materials, goods and labor that are incurred prior to Seller's knowledge of such termination, provided that Seller takes reasonable steps to mitigate its damages. To the extent not terminated by Buyer, Seller shall continue performance under the Purchase Order.

**10. Limitation of Liability. BUYER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER, INCLUDING ANY TERMINATION, REJECTION, OR REVOCATION OF ACCEPTANCE OF ALL OR ANY PART OF THE PURCHASE ORDER. IN NO EVENT SHALL BUYER'S LIABILITY HEREUNDER EXCEED THE PURCHASE PRICE OF THIS PURCHASE ORDER.**

**11. Indemnity and Insurance.** Seller shall defend, indemnify and hold Buyer and its directors, officers, employees, customers, affiliates, agents, contractors, successors and assigns harmless from and against any and all claims, liabilities, losses, damages (including special, consequential and incidental damages), actions and expenses (including attorney's fees) in connection with: (a) any breach by Seller of its warranties, covenants or obligations hereunder; (b) any injury (including death), property damage, or economic loss arising out of or related to (i) defective or nonconforming goods or services supplied by Seller under this Purchase Order, or (ii) acts or omissions of Seller or its employees or subcontractors in providing goods to or performing work, including work at Buyer's or a customer's premises or using Buyer's property, unless resulting from the sole negligence of Buyer; (c) any failure to comply with laws under Section 13; and (d) any infringement or contributory infringement of a patent, trademark, copyright, or other proprietary interest by reason of the manufacture, delivery, license, use, or sale of the goods supplied or services performed under the Purchase Order ("Infringement") (except Infringement necessarily resulting from adherence to specifications or drawings, other than those of Seller's design or selection, originally submitted to Seller by Buyer), regardless whether (a) through (d) arise in tort (including negligence), contract, warranty, strict liability, or otherwise. Seller shall provide worker's compensation, commercial general liability, automobile, public liability, and property damage insurance in amounts and coverages sufficient to satisfy all claims hereunder. Such policies shall name Buyer as an additional insured, shall be endorsed to be primary to any coverage provided by Buyer, and shall contain a waiver of any subrogation rights against Buyer.

**12. Intellectual Property Infringement.** For any Infringement (as defined above), Seller shall, at Seller's expense, obtain for Buyer a perpetual, royalty-free license with respect to such item, or shall replace or modify the item in a manner satisfactory to Buyer, so as to avoid the infringement without any degradation in performance. Seller's obligations shall apply even though Buyer furnishes any portion of the design or specifies materials or manufacturing processes used by Seller.

**13. Compliance with Laws.** In providing goods or services under this Purchase Order, Seller shall comply with any and all applicable federal, state, local, and international laws, regulations, ordinances, executive orders, rules, orders, standards, conventions, directives, and treaties, including without limitation those relating to: (i) design, manufacture, transportation, sales, advertising, distribution, exportation, importation, labeling, packaging, certification, or approval of the goods or services; or (ii) employment discrimination, hours and conditions of employment, occupational health and safety, wages, environmental matters, product safety, motor vehicle safety, corrupt or deceptive practices, boycotts, antitrust, consumer products, or government subcontracting. At Buyer's request, Seller shall certify in writing Seller's compliance with the foregoing. Seller's invoices shall contain Seller's certification that the goods purchased hereunder have not been produced, and will not be produced, in violation of any of the provisions of the Fair Labor Standards Act of 1938.

**14. Buyer's Property and Information.** All tools, dies, molds, templates, equipment, specifications, data, drawings, designs, software or materials furnished by Buyer to Seller or paid for by Buyer, including replacements and materials attached thereto, shall remain and be marked as the personal property of Buyer. Such items shall be separately stored and insured by Seller, and Seller assumes all risk of loss and liability arising out of or related to the items, until such items are returned to Buyer. These items shall be used by Seller only for filling Buyer's order and are subject to immediate removal, at Buyer's written request, with each item to be delivered (at Seller's expense) in its original condition, reasonable wear and tear expected. Seller shall provide to Buyer, without restriction on use or disclosure, all information and documents that Seller has or shall develop or acquire related to the work Seller is performing under the Purchase Order. Such information and documents shall be deemed to be "works for hire" and be the property of Buyer, with Buyer having a right of use for any purpose, without liability to Seller. All information and documents Buyer may have disclosed or shall disclose to Seller in connection with the goods to be delivered or services provided hereunder shall be deemed confidential and proprietary and shall not be disclosed or used by Seller without the written consent of an officer of Buyer.

**15. Amendments.** No waiver, alteration, or modification of any of the provisions hereof shall be binding upon the Buyer unless in writing and signed by Buyer's authorized agent.

**16. Assignment.** This Purchase Order may not be assigned by Seller without Buyer's written consent. Any attempted assignment or delegation in violation of this clause shall be void.

**17. Waiver.** No failure by Buyer to enforce a breach of any provision of the Purchase Order shall be deemed a waiver of any other breach of such or other provisions.

**18. Governing Law.** The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Michigan without regard to its conflicts of law principles. Buyer and Seller specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Seller irrevocably consents to the personal jurisdiction of the state and federal courts in and for Kalamazoo County, Michigan, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.