

## TERMS AND CONDITIONS OF SALE

**1. SELLER'S TERMS AND CONDITIONS:** The terms and conditions hereinafter written, being the complete expression of the agreement between the parties, shall supersede the terms and conditions contained in Buyer's purchase order, or elsewhere, in the event of contradiction or inconsistency herewith. Acceptance of delivery of any shipment hereunder shall constitute acceptance of Seller's terms and conditions. No waiver or modification by Seller of any of the terms or conditions hereof shall be effective unless in writing and signed by the Seller. THIS NOTICE IS NOT TO BE CONSTRUED AS ANY ACCEPTANCE OF BUYER'S OFFER UNLESS THE DIFFERENT OR ADDITIONAL TERMS SET FORTH HEREIN ARE AGREED TO BY THE BUYER.

**2. BUYER'S CREDIT:** Any credit specified herein or which may be extended, both as to time and amount, is subject to decrease, cancellation, or limitation by Seller at any time with or without notice, and the purchase price of the material herein described or such part of the material as Seller may tender or offer to deliver from time to time, shall at Seller's option be payable in cash before shipment or on tender or offer of delivery. Seller shall be under no obligation to make any shipment when Buyer is in default under this contract or any other contract between Buyer and Seller.

**3. ORDER ACCEPTANCE:** Buyer's order shall become a contract only when an acknowledgment is signed and issued by an authorized person of Fabri-Kal Corporation.

**4. PRICES:** Seller reserves the right to adjust prices specified herein to conform to Seller's price schedule at time of shipment. In addition to prices specified herein, the Purchaser shall pay, or reimburse the Seller for, the amount of any tax, excise or charged now or hereafter imposed, by any Federal, State or Municipal government upon the sale, production or transportation of the material sold.

**5. DELIVERY:** Seller shall have no liability to Buyer for failure to perform any of its obligations due to fires, floods, strikes, work stoppages, labor shortages, accidents, transportation embargoes or delays, failure or shortages of materials or machinery ordinarily used by Seller for manufacture of the merchandise specified, acts, regulations or priorities of the Federal, State or local government and agencies. In addition, Government contracts or shipments by Seller to other purchasers to fulfill Government contracts, or any other causes of the same or of a different general nature beyond the control of Seller shall excuse the delay, reduction, suspension or failure in making shipments hereunder traceable to such causes. In the event of any such contingency, Seller may, at its option, cancel this Order or the portion thereof as to which such failure or delay shall apply or make delivery within a reasonable time after removal of the contingency and may also, at its option, extend the times for all subsequent deliveries by the duration of the contingency.

**6. TERMS:** Unless special arrangements have been confirmed, terms are net 30 days on invoicing. Terms on tooling are net 10 days.

**7. TITLE:** All items sold hereunder shall pass to Buyer pursuant to Michigan law of sales and in no event later than the date of Fabri-Kal's delivery to carrier at shipping point, F.O.B. Fabri-Kal's plants, Kalamazoo, MI, Hazle Township, PA, Burley, ID, or Piedmont, SC or its other stock-keeping locations.

**8. SHIPMENTS:** Method of shipment shall be stated on this document unless otherwise specified by the Buyer in writing and accepted by Seller. Fabri-Kal shall not be responsible for any damages or losses in transit, such claims should be made directly to the carrier.

**9. WARRANTY:** SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANDISE SOLD HEREUNDER, EXCEPT THAT IT SHALL BE OF SELLER'S STANDARD QUALITY. IN THE EVENT THAT ANY MERCHANDISE IS NOT OF SUCH QUALITY, SELLER MAY REPLACE OR REIMBURSE FOR SAME AFTER ALLOWANCE OF CLAIM AND ITS LIABILITY SHALL BE LIMITED TO THE INVOICE PRICE OF ANY SO DEFECTIVE MERCHANDISE THAT IT DOES NOT REPLACE. PARTICULARLY, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SHALL NOT BE RESPONSIBLE FOR THE SUITABILITY OF THE MERCHANDISE FOR ANY PARTICULAR USE OR FOR ANY LOSS RESULTING FROM THE INHERENT CHARACTERISTICS OR QUALITY OF MATERIALS. EITHER USE OF THE MATERIALS, OR FAILURE TO MAKE CLAIMS FOR REFUND OR ALLOWANCE WITHIN THIRTY DAYS FROM DATE OF SHIPMENT SHALL CONSTITUTE ACCEPTANCE OF THE MATERIALS SOLD HEREUNDER AND A WAIVER BY THE BUYER OF ANY CLAIMS WITH RESPECT THERETO. NO MERCHANDISE IS TO BE RETURNED WITHOUT PRIOR RETURN AUTHORIZATION PER SELLER'S RETURN POLICY.

**10. LIABILITY:** Fabri-Kal's liability shall be limited to the price of the materials sold. In no event shall Seller be liable for prospective profits or special, indirect or consequential damages, nor shall recovery of any kind against Seller be greater in amount than the purchase price of the specific material with respect to which recovery is made. Buyer assumes all risk and liability whatsoever, including ensuring compliance with laws issued Federal, State, and local governmental agencies, and Buyer agrees to indemnify Seller for any personal injury or property loss or damage resulting from handling, transportation, possession, use or application of the material. Buyer shall inspect all materials furnished hereunder immediately after receipt.

**11. INDEMNITY:** The Buyer expressly agrees to indemnify and hold Fabri-Kal harmless against all losses resulting from any claim of infringement of patents or trademarks.

**12. FULFILLMENT OF ORDER:** It is understood that permissible over-runs or under-runs shall be 10%. Deliveries within such permissible under-run limitations shall be deemed complete deliveries. Purchaser shall accept and pay for excess quantities delivered within such permissible over-run limitations.

**13. CANCELLATIONS:** Orders shall not be cancelled, altered or suspended except upon full payment of any losses sustained by Fabri-Kal.

**14. END USE:** Final determination of the suitability of the material for the use contemplated by Buyer is the sole responsibility of Buyer, and Seller shall in no way be responsible for the suitability of the material for any particular end use of the merchandise.

**15. RESTRICTIONS ON THE USE OF PRODUCTS:** Buyer agrees that non-printed Greenware® PLA products and custom printed Greenware® PLA products that lack proper labeling defined by the State of Washington may not be sold for use in the State of Washington, pursuant to 70A.455, and agrees to indemnify seller for any penalties, fees, or attorney fees incurred as a result of such sale.

FABRI-KAL CORPORATION  
Kalamazoo, Michigan