

## FULCRUM CONTAINER, LCC TERMS & CONDITIONS

**ACCEPTANCE:** The attached Purchase Order (the "Purchase Order") is Fulcrum Container, LLC's (the "Purchaser") offer to purchase the goods and/or services described thereon from Seller. The Purchaser's placement of this Purchase Order with Seller is expressly conditioned upon Seller's acceptance of all of the terms and conditions of purchase contained herein or attached to the Purchase Order. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by the Purchaser's authorized representative, and no such additional or different terms or conditions in any printed form of Seller shall become part of this contract despite the Purchaser's acceptance of goods or services, unless such acceptance specifically recognizes and assents to their inclusion. Any objection by Seller to the terms and conditions hereof shall be ineffective unless the Purchaser is advised in writing thereof within ten (10) days of the date of the Purchase Order.

**DELIVERIES; TIME:** Time is of the essence with respect to the performance of the Purchase Order. If the deliveries and/or services described on the face hereof are not made and/or completed at the time agreed upon, the Purchaser reserves the right to: (i) cancel all or any part of the Purchase Order for any goods not delivered or services not rendered as specified, and hold the Seller accountable for any damages resulting therefrom, or (ii) extend the time for delivery (for such time as the Purchaser may determine).

**REJECTION:** All goods purchased hereunder are subject to the Purchaser's count, inspection and approval, notwithstanding prior payment by the Purchaser. Goods rightfully rejected by the Purchaser shall be held, transported and/or stored at Seller's expense. Seller shall promptly reimburse the Purchaser for any such expenses and expenses incurred by the Purchaser or third-party to inspect defective or otherwise nonconforming goods.

**IDENTIFICATION:** All invoices, packages, shipping notices, instruction manuals and other written documents affecting the Purchase Order shall contain the applicable Purchase Order number. Packing lists shall be enclosed in each box or package shipped pursuant to the Purchase Order, indicating the contents therein. Invoices will not be processed for payment until all goods invoiced are received.

**PRICES:** If the price is not stated in the Purchase Order, the goods or services shall be billed at the price last quoted, or paid by a customer of Seller, or the prevailing market price, whichever is lower.

**INTEREST:** Notwithstanding any provision in any invoice or other document issued by Seller, under no circumstances shall Buyer be liable to pay interest exceeding the rate of 10% per annum on any delinquent payment or account.

**LIENS AND ENCUMBRANCES:** Seller warrants and represents that all the goods will, when delivered hereunder, be free and clear of all liens, claims and/or encumbrances of every kind.

**SHIPPING INSTRUCTIONS:** All goods are to be shipped freight prepaid F.O.B. destination, unless otherwise stated. Where the Purchaser has so authorized in writing, goods may be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the most economical common carrier, or the carrier specified, and list said charges as separate goods on Seller's invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. The Purchaser reserves the right to reject C.O.D. shipments. Seller shall not insure the goods for the Purchaser's account during shipment except upon the Purchaser's written request, or where the shipping mode is parcel post.

**WARRANTY:** SELLER WARRANTS THAT THE GOODS SUPPLIED AND/OR SERVICES PERFORMED UNDER THIS PURCHASE ORDER CONFORM TO THE SPECIFICATIONS CONTAINED IN THE PURCHASE ORDER, ARE MERCHANTABLE AND FIT FOR THE PARTICULAR PURPOSES FOR WHICH THE GOODS ARE INTENDED AND/OR ORDINARILY EMPLOYED, AND THAT ALL SUCH GOODS HAVE BEEN PRODUCED IN COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS. SELLER FURTHER WARRANTS TO THE PURCHASER, THAT ALL GOODS DELIVERED UNDER THE PURCHASE ORDER WILL BE FREE FROM DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP AND WILL CONFORM TO APPLICABLE SPECIFICATIONS, DRAWINGS, SAMPLES AND DESCRIPTIONS. IF SELLER IS RESPONSIBLE FOR DESIGN OF THE GOODS, SELLER WARRANTS THAT ALL GOODS DELIVERED UNDER THIS PURCHASE ORDER WILL BE SUITABLE FOR USE BY THE PURCHASER. THE PURCHASER'S WRITTEN APPROVAL OF DESIGNS FURNISHED BY SELLER SHALL NOT RELIEVE SELLER OF ITS OBLIGATIONS UNDER THIS WARRANTY. SELLER SHALL BE LIABLE FOR ALL DAMAGES BOTH TO THE PURCHASER AND ANY CUSTOMER OF PURCHASER INCURRED AS A RESULT OF ANY DEFECT OR BREACH OF WARRANTY CONTAINED IN THE PURCHASE ORDER. THE FORGOING EXPRESS WARRANTIES SHALL BE IN ADDITION TO ANY WARRANTY CUSTOMARILY MADE BY SELLER OF ITS GOODS AND ANY IMPLIED WARRANTIES, AND SHALL BE CONSTRUED AS CONDITIONS AS WELL AS WARRANTIES. THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE GOODS OR COMPLETION OF THE SERVICES PROVIDED AND SHALL BE FULLY ENFORCEABLE THEREAFTER. SELLER'S WARRANTY HEREUNDER IS PART OF THE CONSIDERATION FOR THIS PURCHASE ORDER, AND ANY PAYMENT BY THE PURCHASER HEREUNDER IS CONDITIONAL UPON THIS WARRANTY REMAINING IN EFFECT. NO MODIFICATION OR OTHER CHANGE OF THIS WARRANTY SHALL BE VALID UNLESS EVIDENCED BY THE PURCHASER'S WRITTEN CONSENT.

**MATERIALS, TOOLS AND EQUIPMENT PAID FOR OR FURNISHED BY THE PURCHASER:** Title to all tools, equipment, dies, gigs, fixtures or other materials, if any, either paid for or furnished by the Purchaser in connection herewith shall at all times remain with the Purchaser. Such property shall be maintained by Seller in good and usable condition, reasonable wear and tear excepted, and Seller shall be responsible for any loss or damage thereto and shall at all times keep the same insured for its full insurable value. Seller shall not include any charge (including amortization or depreciation) for such property in the price of any article manufactured, or service rendered, by or with the use of such property. Such property shall be plainly marked or

otherwise adequately identified by Seller as the property of the Purchaser and shall be stored separate and apart from Seller's property to the extent possible. Such property shall not be removed from Seller's premises, nor used for any purpose other than that for which furnished or acquired without the Purchaser's prior written approval. The Purchaser may, at all reasonable times, inspect such property and Seller's records with respect thereto and take possession of such property on demand. Seller hereby waives any lien that it may have or may hereafter have on such property and agrees to execute one or more Uniform Commercial Code financing statements with respect to such property showing the Purchaser's title thereto whenever so requested by the Purchaser.

**FOOD SAFETY:** If the goods and/or services described on the Purchase Order require the Seller's employees to enter Purchaser's facilities, the Seller's employees will be responsible to follow all Good Manufacturing Practice and Safety policies while in the facility. It will be Purchaser's responsibility to train the Seller's employees on these policies. Any damages caused by contamination or adulteration of Purchaser's products by the Seller's employees while not following Purchaser's Good Manufacturing Practice and Safety policies is the sole responsibility of the Seller.

**CERTIFICATIONS:** The Seller is expected to maintain all applicable certifications that are customary for the goods and/or services being provided by Seller. If Seller fails to maintain applicable certifications, the Purchaser reserves the right to: (i) cancel all or any part of the Purchase Order for any goods not delivered or services not rendered as specified, and hold the Seller accountable for any damages resulting therefrom, or (ii) extend the time for delivery (for such time as the Purchaser may determine).

**CHEMICALS:** Only approved chemicals may be used within Purchaser's facilities. A specification sheet, FDA Statement and a Safety Data Sheet will be required for approval. Approval can be granted by Purchaser's Safe Quality Foods Coordinator or Plant Manager.

**CONFIDENTIALITY:** Any designs, specifications, drawings, reprints, technical information or data ("Confidential Information") furnished by the Purchaser to Seller hereunder shall remain the Purchaser's property, shall be kept confidential by Seller, shall be used only with respect to articles manufactured or services rendered for the Purchaser, and shall be returned to the Purchaser at the Purchaser's request. Seller shall not, without the Purchaser's prior written consent, in any manner divulge the fact that Seller has a contract to furnish articles and/or services to the Purchaser. Seller shall be responsible for safe-guarding all secret, confidential or restricted matters that may be disclosed or developed in connection with its work under the Purchase Order.

**SELLER'S INDEMNITY:** Seller agrees to indemnify and hold the Purchaser harmless from and against any and all claims, liabilities, losses, damages and other expenses (including reasonable attorneys' fees) suffered or incurred by the Purchaser as a result of or arising out of any breach by Seller of the Purchase Order (including a breach of any warranties provided pursuant to this Purchase Order) or Seller's negligence in supplying goods or performing services under the Purchase Order.

**TAXES:** Unless otherwise expressly stated in the Purchase Order, Seller shall be liable for all taxes payable or collectible with respect to the goods or services ordered pursuant to this Purchase Order.

**WAIVER:** The Purchaser's failure to insist on the strict performance of any of the terms hereof, or to exercise any right or privilege hereunder, or the Purchaser's waiver of any breach by Seller hereof, shall not thereafter waive any such terms, conditions, rights or privileges that the Purchaser may have hereunder.

**GOVERNING LAW:** The Purchase Order shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to its rules regarding conflict of laws.

**VENUE.** All proceedings involving the performance, interpretation or enforcement of any of the provisions of this Purchase Order shall be brought exclusively in the circuit court in KEWAUNEE County, Wisconsin. Neither party shall seek to remove any such action to federal court in Wisconsin or elsewhere, and Seller waives any claim that the forum selected is inconvenient.

**ENTIRE AGREEMENT:** The Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior agreements, understandings and statements, whether oral or written, regarding such subject matter. No modification to, change in, or departure from, the provisions of the Purchase Order shall be valid or binding on the Purchaser, unless approved in writing by the Purchaser. No course of dealing or usage of trade shall be applicable unless expressly incorporated into the Purchase Order.

**FORCE MAJEURE:** Neither Seller nor the Purchaser shall be liable for delays occasioned by unforeseeable causes beyond their control and without their fault or negligence; provided, however, that if any such delay occurs, the Purchaser shall have the option to cancel all or any part of the goods or services requested hereunder and shall also have the right to acquire goods furnished, work in process and special raw materials set aside for the performance of the Purchase Order, upon payment of a reasonable proportion of the purchase price. Written notice of any such delay, including the anticipated duration of such delay, must be given by the nonperforming party within ten (10) days of the unforeseeable cause or event.

**DELEGATION:** Seller may not assign or delegate performance of its obligations hereunder without the prior written consent of the Purchaser, which Purchaser may withhold in its sole and absolute discretion.