

## TERMS AND CONDITIONS OF SALE

EFFECTIVE JUNE 12, 2024

These Terms and Conditions of Sale for Direct Sale (“**Terms & Conditions**”) and any Purchase Order (defined below) (collectively, “**Agreement**”) is between Pactiv LLC, Evergreen Packaging LLC, Fabri-Kal LLC and any other direct or indirect subsidiary of Pactiv Evergreen Group Holdings Inc. (collectively, “**Company**”) and the person or entity that has executed such Purchase Order or a governing agreement (“**Buyer**”), and governs the manufacturing and sale to Buyer of ordered products manufactured by Company. Each unit of product ordered from Company by Buyer shall be referenced hereafter as “**Product**”. **NO CONFLICTING OR DIFFERENT TERMS OR CONDITIONS PRINTED ON ANY PRIOR OR SUBSEQUENT PURCHASE ORDERS, ORDER ACKNOWLEDGMENTS, BILLS OF LADING, PACKING SLIPS, INVOICES OR THE LIKE SHALL BE BINDING ON THE PARTIES, IT BEING THE INTENT OF THE PARTIES THAT THE TERMS OF THIS AGREEMENT SHALL CONTROL.** Further, this Agreement only applies to the completed Purchase Order and the Products ordered under that completed Purchase Order, unless the parties have negotiated another agreement (such as a Supply Agreement) that incorporates these Terms & Conditions. Company and Buyer are each generically referenced as a “**Party**” and collectively as the “**Parties.**”

### 1. **PURCHASE ORDERS SUBMISSION AND ACCEPTANCE.**

- 1.1. **Purchase Order.** A “**Purchase Order**” shall mean the order form supplied by Company to Buyer that specifies Buyer’s offer to purchase Company’s Products.
- 1.2. **Placing Orders.** To order Products from Company, a Buyer must deliver a written Purchase Order to Company Customer Service either (a) to the company headquarters at 1900 West Field Court, Lake Forest, Illinois 60045 or as otherwise directed by Company; (b) to a Company facsimile number or email address provided to Buyer by Company Customer Service; or (c) through an electronic ordering system approved by Company. An order must contain the following information:
  - Legal name and address of Buyer.
  - Individual name, title, telephone number and email address of Buyer representative to contact regarding the order.
  - Customer identification number assigned to Buyer by Company Customer Service.
  - Purchase Order identification number assigned by Buyer.
  - Vendor name and identification number assigned to Company by Buyer.
  - Company Product number, price and quantity of each Product being ordered.
  - Scheduled shipment date and requested delivery date if Company will deliver the ordered Products to a Buyer location.
  - Scheduled pick-up date and name of carrier if Buyer will take delivery of the ordered Products at a Company location.
  - Address of single Buyer location or Company location within the continental United States of America where delivery will occur.

A Purchase Order must be submitted by Buyer and accepted by Company at least seven (7) business days in advance of the scheduled shipment date or scheduled pick-up date. The requested delivery date must allow a commercially reasonable period of time to transport the ordered Products from the Company manufacturing facility or warehouse to the delivery location of Buyer. A Purchase Order for a Product must also meet all requirements of the then current Company order policies for that Product as provided by Company to Buyer (e.g., full truck load or other minimum order size; individual items in even layer and pallet quantities; truck trailer cube configuration, permitted delivery or pick-up location; etc.). If Company accepts a Purchase Order that does not meet all requirements of the then current Company order policies for that Product or that requires special handling, packaging or transportation, Company may impose additional charges on Buyer in supplying the non-conforming order (e.g., if Buyer orders less than a full truck load quantity, Buyer will bear the entire cost of delivery; if Buyer requires expedited production or delivery, Buyer will pay all expediting costs; etc.).

- 1.3. **General Submission of Purchase Orders.** Unless otherwise agreed upon by the Parties, Buyer shall deliver to Company the Purchase Order governed by these Terms & Conditions which are hereby incorporated into every submitted Purchase Order. Unless Company declines Buyer’s submitted Purchase Order, Company agrees to respond to Buyer’s submission with a Purchase Order acknowledgement as soon as reasonably possible after Company receives the submitted Purchase Order.

Company endeavors to accept, modify or decline any Purchase Order within two (2) business days of the Purchase Order’s indicated scheduled shipment date or scheduled pick-up date, whichever is applicable. Company will notify Buyer in a commercially reasonable time frame of any change or modification to a Purchase Order.

- 1.4. **Release of Product.** Buyer must provide a requested delivery date with any Purchase Order. In the event Buyer fails to provide a requested delivery date, Company shall have the right to initiate shipping within eleven (11) days of acceptance of the Purchase Order or shall be entitled to impose Warehouse Charges (defined below) upon Buyer in accordance with Section 2.2 below.

### 2. **PRICE, INVOICING, AND DISCOUNTS.**

- 2.1. **Pricing.** The price for each Product shall be the price in effect on the scheduled shipment date or the scheduled pick-up date indicated on the Purchase Order inclusive of delivery costs unless otherwise agreed to by the Parties. All prices are Company’s confidential information. Buyer shall not disclose any such terms to any third party during or after the term of this Agreement.
- 2.2. **Additional Shipping and Warehouse Charges.** Company may impose reasonable additional charges if (i) Products require special handling, packaging, warehousing, or transportation; (ii) Buyer specifies a quantity of Products on the Purchase Order that is less than a full truckload, or (iii) the Buyer requires expedited production or shipping.

Company may also impose Warehouse Charges for delays in delivery caused by Buyer. “**Warehouse Charges**” mean storage charges for Products which shall be equal to one percent (1%) of the price of the Product subject to the delay per day of delay or

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a lesser amount determined by Company. Company may separately invoice Buyer for any additional charges, Warehouse Charges, or other fees incurred under this Agreement, and Company may offset any such additional charges, Warehouse Charges, or other fees accrued under this Section 2 against any amounts owed or paid by Buyer (or any Buyer affiliate) under any agreement with Company.

- 2.3. **Discounts.** The Parties may agree to certain cash discounts for early payment. Those discounts are applied to the net price of the Products independent of freight, taxes, duties, rebates, allowances, returns, credits and other deductions and charges incurred on the transaction.
- 2.4. **Exclusive of Additional Charges.** Prices are exclusive of United States federal, state, and local, and provincial and non-government sales, use, excise, environmental and similar taxes, fees and impositions currently in force or enacted in the future. Any taxes, fees and impositions arising from the sale of Products shall be the sole responsibility of Buyer.

### 3. PAYMENTS AND LATE FEES.

- 3.1. **Payment.** Subject to Section 4 of these Terms & Conditions or unless the Parties agree otherwise, Buyer shall provide payment in full no later than thirty (30) days after the invoice date. If the due date of an invoice or payment deadline for a cash discount falls on a Saturday, Sunday or U.S. federal holiday, the due date or payment deadline will be extended to the next business day. Payments must be in U.S. dollars and be made by ACH or another form of electronic funds transfer approved by Company. A payment will be considered made on the date the Buyer's funds have been deposited in and credited to Company's account.
- 3.2. **Late Payment.** Any late payment on an invoice shall bear interest at the annual rate of eighteen percent (18%) or the highest rate allowed under Illinois law, whichever is lower, and may also be deemed a material breach of this Agreement at Company's discretion. Unless Company agrees otherwise, any payments not made in full by the due date shall be considered a late payment and subject to the late payment interest rate. In addition, Buyer will reimburse Company for any attorney fees, expert fees, court costs and other expenses incurred by Company in collecting a delinquent amount and accrued interest on such delinquent amount.
- 3.3. Buyer may not withhold, offset or otherwise deduct from the invoiced amounts owed under this Agreement without the written consent of Company. If Buyer pays Company less than the invoiced amount owed without Company's written consent for any reason, then Buyer must provide a written notice explaining the basis for the amount withheld, offset or deducted, along with any substantiating documentation and any partial payment, on or before the invoice due date. A failure by Buyer to submit a timely written notice to Company by the invoice due date will be deemed a waiver of any defense to nonpayment of the invoice amount owed and any claim against Company on the transaction.

4. **CREDIT.** Company reserves the right in its sole discretion to determine the credit limit of Buyer and to adjust it any time. If the credit limit of a Buyer has been or will be exceeded or if Company determines that there has been an adverse change in the creditworthiness of Buyer, Company may require payment in advance or other adequate assurance acceptable to Company before Company accepts the Purchase Order or delivers Products. A failure by Buyer to pay Company an amount owed when due on an order will be immediate grounds to suspend or terminate further performance or require payment in advance of Company accepting a Purchase Order or delivering Products.

5. **FULFILLMENT.** The quantity of Products delivered to Buyer shall not vary by more than 10% from the quantity of Products specified in the Purchase Order. Unless Buyer receives less than 10% of the quantity ordered, the Product shall be deemed delivered in full and Buyer shall make payment for the quantity specified in the Purchase Order.

### 6. DELIVERY.

- 6.1. **Orders for Pick-Up.** For Products picked up by Buyer or Buyer's selected carrier, the risk of loss is transferred to Buyer on a EXW basis per Incoterms 2020 on Company's dock. Company will be responsible for loading the Products at Company's expense at the point of shipment, and Buyer will be responsible for unloading the Products at Buyer's expense at the point of delivery. Title to the Products will transfer to Buyer once the Products have been loaded in the truck trailer or other container and placed in the custody of Buyer or Buyer's carrier. The Parties shall work together to determine the appropriate time for Buyer or Buyer's carrier to pick up the Products.
- 6.2. **Orders for Delivery.** For Products delivered to Buyer by Company's selected carrier, the risk of loss is transferred to Buyer on a Delivery at Place (DAP) basis per INCOTERMS 2020. The Products will be delivered to the address specified in the Purchase Order unless the Parties agree otherwise in writing. Company will select the carrier and decide on the method and route of transportation for an order delivered to a Buyer location. Title to the Products will transfer to Buyer once the Products have been tendered by Company's carrier for unloading at the loading dock at the Buyer's location. If Buyer requests and Company accepts any modification to the requested delivery date within the seventy-two (72) hour period directly preceding the requested delivery date, Company shall be entitled to impose reasonable additional charges upon Buyer for Company's cost relating to such delay in shipping or delivery due to the new delivery date, including Warehouse Charges in accordance with Section 2.2 above. If such delay is not resolved, through no fault of Company, within the calendar month following the requested delivery date, Buyer shall forfeit the Products, and, in addition to any charges described in the preceding sentence, Buyer shall be responsible for any associated costs Company incurs due to Buyer's forfeiture of Products.

7. **ACCEPTANCE OR REJECTION OF DELIVERED PRODUCTS.** Buyer will have a period of thirty (30) days after delivery in which to inspect delivered Products and either accept or reject them. Buyer will be deemed to have accepted any delivered Products which Buyer sells or uses, or which suffer any loss or damage, during the 30-day period. Buyer may only reject a delivered Product for

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the reasons permitted under, and in full compliance with, Section 8 of these Terms & Conditions. Any delivered Products that Buyer does not reject and return in compliance with Section 8 of these Terms & Conditions will be deemed accepted on the thirtieth (30th) day after delivery. Once Buyer has accepted a delivered Product, Buyer may not revoke its acceptance for any reason, however Buyer may request a quality return as specified in Section 8.2 herein.

### 8. COMPANY RETURN POLICY.

#### 8.1 General Terms

All claims for Products sold by Company in the United States of America will be pursuant to this Section 8. If Company is notified of a Product claim within the required notification period in this Section 8 and authorizes the return of a Product in compliance with this Section 8, Company will provide a credit or refund for the returned Product in full satisfaction of the Product claim. If Company is not notified of a Product claim within the required notification period or if a Product is not returned within the applicable authorized return period described in this Section 8, the Product claim will be deemed waived. Company will evaluate and only Product returns which are accepted will be granted credits or refunds for valid quality, damage-in-transit or mis-ship Product claims as outlined in this Section 8.

- To receive a credit for a returned Product, a Buyer must request a Company Return Authorization (“**RA**”) number by email or phone as provided below.
- Return authorizations need to be requested within the appropriate notification period for each return type. Requesting a return authorization does not guarantee that Company will accept the return or issue a credit.
- The RA number must accompany all return shipments; shipments arriving without an RA number will be refused (an RA number may be referenced on a bill of lading).
- For your convenience, below are the methods to request an RA number:
  - Email your designated Returns Coordinator or the Company Return Goods email address at [fsreturns@pactivevergreen.com](mailto:fsreturns@pactivevergreen.com).
  - Call (800) 323-3041 or your designated Returns Coordinator directly.
- A Company Returns Coordinator will provide Buyer with an approved RA number within two (2) business days after Company confirms that the Product is being returned for a valid quality, damage-in-transit or mis-ship Product claim. The Return Coordinator will issue a credit memo within five (5) business days of receipt of returned Product at the Company warehouse provided that the Product is returned in its original delivered condition and matches the RA number. If a Buyer also desires to receive replacement Product, the customer will be directed to provide a new Purchase Order to Company Customer Service.
- An authorized credit amount will be based on the last invoiced purchase price for each item of the authorized return less the applicable cash discount.
- No credit will be authorized for Products damaged in transit in returning to Company; credit will be authorized only for Products returned in original delivered condition.
- All RA numbers will expire 60 days from the date they are issued. No replacement Product or credit will be given for any Products covered by the RA number that are returned after this period.
- Deductions must not be taken against original invoice and should be taken only after the credit memo has been issued.
- Company reserves the right to offset unauthorized return deductions against any payments due to Buyer.
- Buyer will provide Company with all reasonably requested information related to a Product claim and afford Company a reasonable opportunity to examine and test the Product that is the basis for the claim.

#### 8.2 Quality Returns

- This Section 8.2 only applies to Products with defects in design, material or manufacture caused by Company.
- Quality issues should be addressed to your Sales Representative or Returns Coordinator assigned to quality issues.

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- All quality related returns must be reported in writing via a request for return authorization within sixty (60) days of invoice date (notice requirement is ten (10) days from delivery for Earth Choice Products).
- Picture evidence must be provided for all quality related claims.

### **8.3 Damage-in-Transit**

- This Section 8.3 only applies to Products damaged-in-transit caused during the delivery by a Company carrier.
- Damage-in-transit should be addressed to the Returns Coordinator assigned to the warehouse from which the Product shipped or [fsreturns@pactivevergreen.com](mailto:fsreturns@pactivevergreen.com).
- All damage related returns must be reported in writing via a request for return authorization within thirty (30) days of invoice date (notice requirement is ten (10) days from delivery for Earth Choice Products).
- Picture evidence from Buyer of the damaged Product, and an appropriate Proof of Delivery document signed by Buyer and the Company carrier, must be provided for all damage related claims.

### **8.4 Mis-ships**

- This Section 8.4 only applies to Company products that have not been ordered, Products that have been delivered in the incorrect quantity (i.e., overage or shortage), Products that have been delivered late or Products that have been delivered to the incorrect destination (or other errors in delivery).
- Mis-ships should be addressed to the Returns Coordinator assigned to the warehouse from which the Product shipped or [fsreturns@pactivevergreen.com](mailto:fsreturns@pactivevergreen.com). For overages or shortages, the subject line should include the Purchase Order number, the Company delivery number and quantity of over or shorted Products.
- Mis-ships must be reported in writing via a request for return authorization within thirty (30) days of invoice date (notice requirement is ten (10) days from delivery for Earth Choice Products).
- An appropriate Proof of Delivery document signed by Buyer and the Company carrier clearly indicating the mis-shipped Products and quantities must accompany any return requests.
- If Buyer elects to retain and accept Products involving an overage, shortage or other mis-ship claim, the Returns Coordinator will process the appropriate debit or credit entry to the invoiced amount.

9. **CHANGES.** Company reserves the right, at any time, and from time to time, and without providing prior notice to Buyer, to make design, specification, composition and other changes or modifications in or to its Products, as Company deems appropriate, and any Products so changed or modified shall be considered Products under this Agreement in fulfillment of Company's obligations.

## 10. **WARRANTY.**

10.1. **Mutual Warranty.** Each Party represents and warrants that: (a) it is duly organized, validly existing and in good standing; (b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement; (c) this Agreement constitutes the legal, valid and binding obligation of the Party, enforceable against the Party in accordance with its terms; and (d) it is not insolvent and is paying all of its debts as they become due.

10.2. **Company Limited Warranty.** Company warrants to Buyer as of the date of its delivery that each Product: (a) complies in all material respects on such date with the written specification for the Product published by Company on [www.pactivevergreen.com/material-type](http://www.pactivevergreen.com/material-type) or otherwise provided by Company to Buyer ("**Specifications**"); (b) does not infringe on such date on any U.S. patent of any third party; and (c) is transferred with good title, free and clear of all liens and encumbrances created by or through Company.

If there has been a breach of warranty as defined in Section 10.2(a) herein, Buyer must notify Pactiv within sixty (60) days of delivery of the defective Product. The sole remedy of Buyer for a breach of warranty as defined in Section 10.2(a) herein will be to return the defective Product to Company for a refund or a credit in accordance with Section 8 of this Agreement,

10.3. **EXCEPT FOR THE ASSURANCE THAT A PRODUCT WILL COMPLY WITH ITS PUBLISHED SPECIFICATIONS ON THE DATE OF DELIVERY TO A DISTRIBUTOR, COMPANY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS REGARDING ITS PRODUCTS AND PERFORMANCE WHETHER EXPRESS, IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

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### 11. LIMITATION OF LIABILITY.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES OR LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT ACTUALLY RECEIVED BY COMPANY FROM BUYER FOR THE PRODUCT INVOLVED IN THE BREACH OR OTHER CLAIM OR OCCURRENCE. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST COMPANY MORE THAN ONE (1) YEAR AFTER THE DELIVERY OF THAT PORTION OF THE PRODUCTS THAT GAVE RISE TO THE CLAIM.

### 12. FORCE MAJEURE.

Company will not be liable to Buyer for any delay or nonperformance, in whole or in part, in supplying any Product or other performance arising from events or conditions beyond the reasonable control of Company, including, without limitation, natural disasters; U.S. Health and Human Services-designated pandemics or epidemics; shortages in material; strikes, slowdowns and other labor disputes; governmental actions; a breach, negligence, criminal misconduct or other act or omission of any third-party; fire or other insured or uninsured casualty. If Company is unable to purchase raw materials at a commercially reasonable price or in the event it elects, in its reasonable discretion, to cease or suspend the operation of any facility where it is producing any quantity of the material delivered under this Agreement, Company shall be excused from its related obligations in this Agreement. Quantities of Products so affected by any such cause may be eliminated from this Agreement, or remain with corresponding price adjustments if applicable, without liability, but this Agreement shall otherwise remain unaffected. In addition, if, because of any such circumstances, there should be a shortage of any raw material for any Product covered by this Agreement, Company may, but shall not be obligated to, (a) purchase replacement raw material in the marketplace, (b) change its supply point for the Buyer, or (c) change the facility where the raw material or Product is manufactured in order to satisfy any obligations under this Agreement, and in each such case Company shall be entitled to increase the prices of the Products to recoup increased costs related to such purchase of replacement raw material or change in supply point or facility.

### 13. CONFIDENTIALITY.

Buyer shall treat all information furnished by Company or generated on behalf of Company as confidential and shall not disclose any such information to any other person or entity or use such information itself for any purpose without Company's written consent. Buyer shall not advertise or publish its relationship to Company or use any of Company's trademarks without Company's express written consent. Nothing in this Agreement shall modify or weaken any confidentiality obligations the Parties may have otherwise agreed to, including in any non-disclosure agreement.

### 14. APPLICABLE LAW.

This Agreement and any transaction based on them for the sale of Products by Company to Buyer will be governed by the laws of the State of Illinois and the United States of America regardless of choice-of-law principles. Company and Buyer each submits to the exclusive jurisdiction of the state court in Cook County, Illinois and federal court for the United States District Court for the Northern District of Illinois. Except as limited in these Terms & Conditions, Company or Buyer may exercise all rights and remedies available at law and in equity for a breach.

### 15. ENTIRE AGREEMENT.

These Terms & Conditions and the Purchase Order(s) set forth the entire agreement of the Parties with respect to the matters set forth in this Agreement, and any and all prior agreements relating to the subject matter of this Agreement, whether oral or written, are superseded by this Agreement. In the event of a conflict between the provisions of these Terms & Conditions and a Purchase Order, these Terms & Conditions shall prevail. Company rejects all conflicting and additional provisions submitted by Buyer that are not otherwise included in this Agreement including in a Buyer's own purchase order, order acknowledgement, bill of lading, invoice, correspondence or other documents. Each Purchase Order is an offer or counteroffer by Company to sell the Products described in the Purchase Order in accordance with these Terms & Conditions and is not a confirmation or acceptance of any offer made by Buyer, and Company's acceptance of this offer is expressly made conditional on assent to this Agreement. No such additional or different terms will be of any force or effect. Any exception to this Section 15 requires Company's express written consent. If any provision of this Agreement is determined to be invalid for any reason, such invalid provision shall not affect the validity of any other provisions, which other provisions shall remain in force and effect as if this Agreement had been executed with the invalid provisions eliminated.

### 16. WAIVER.

This Agreement may only be modified or amended in writing, duly executed by each of the Parties. No failure by either Party to exercise any power given to it under this Agreement, or to insist upon strict compliance by the other Party of any obligation under this Agreement,

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and no custom or practice of the Parties at variance with the terms of this Agreement will constitute a waiver of the Party's right to demand exact compliance with the terms of this Agreement.

**17. REMEDIES NON-EXCLUSIVE AND CUMULATIVE.**

Unless otherwise provided in the Agreement, all rights and remedies made available to a Party by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and in addition to every other remedy available at law or equity.