

## PELLA CORPORATION (Buyer) – PURCHASE ORDER TERMS AND CONDITIONS

- 1. Entire Agreement; Modifications; Assignment** This agreement and any documents accompanying or referred to herein, including electronic data, (collectively, the "Order") constitute the entire agreement between the parties and can only be modified by a subsequent writing signed by both Buyer and Seller, except as provided herein. No part of the Order may be assigned or subcontracted without the prior written approval of Buyer.
- 2. Acceptance** Seller's acceptance of the Order shall be evidenced by Seller's commencement of work on the Goods or by Seller's shipment of the Goods, whichever occurs first.
- 3. Buyer's Right to Make Changes** Buyer shall have the right to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation at any time. If any such changes will cause an increase or decrease in the cost of the Goods, or require a change in delivery dates, Seller shall notify Buyer as soon as possible and an equitable adjustment shall be made as agreed to by Buyer and Seller.
- 4. Cancellation for Convenience of Buyer** Buyer reserves the right to cancel an Order or any part thereof at any time and for any reason. In the event of such cancellation, Seller shall immediately stop all work on the Goods and shall notify its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge reflecting the percentage of the work performed prior to the notice of cancellation, plus actual additional direct costs resulting from the cancellation, but less amounts saved by Seller as a result of the cancellation and amounts recoverable by Seller in mitigation of its damages. Seller shall not be paid for any work done after receipt of the notice of cancellation, or for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.
- 5. Cancellation for Cause** Buyer may also cancel an Order or any part thereof in case of any default by the Seller, including failure of the Seller to comply with any of the terms and conditions of the Order. In the event of such a cancellation for cause, Buyer shall not be liable to Seller for any amount, except for reasonable price for conforming Goods received and accepted by Buyer, and Seller shall be liable to Buyer for any and all damages, including incidental and consequential damages, sustained by Buyer as a result of Seller's default.
- 6. Delivery; Transfer of Title** The terms of delivery are as stated in the Order. The obligation of Seller to meet the delivery dates and quantities set forth is of the essence. Deliveries are to be made at the time(s) and in the quantities specified. Seller will be liable to Buyer for any expenses incurred by Buyer as a result of Seller's default. All Orders are FOB Seller's place of shipment unless otherwise specified in the Order.
- 7. Force Majeure** Buyer may delay delivery or acceptance of any Goods for a reasonable time if such delay is made necessary by any cause beyond Buyer's control. Seller shall hold such Goods at the direction of the Buyer, and shall deliver them when the problem necessitating the delay has been resolved. Buyer shall be responsible only for Seller's direct additional costs incurred in holding the Goods or delaying performance at Buyer's request.
- 8. Warranty; Compliance with Laws, etc.** Seller expressly warrants that all Goods or services furnished under an Order shall conform to all applicable specifications, laws, regulations and standards, including child labor and other laws relating to human trafficking. When required by law, all Goods will be accompanied by proper Material Safety Data Sheets. Seller further warrants that the Goods will be new, will be free from defects in material or workmanship, will conform to any samples provided to Buyer and to any statements made to Buyer by Seller's representatives or made on the containers or labels or advertisements for such Goods, and that the Goods will be adequately contained, packaged, marked and labeled. Seller warrants that it has good title to the Goods and the right to sell the Goods to Buyer. Seller warrants that all Goods furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the Goods or services called for under this Order, Seller warrants that such Goods and services will be fit for such purpose. Buyer's inspection, testing, acceptance or use of the Goods or services furnished hereunder shall not affect the Seller's obligations and this warranty. Seller's warranty shall run to Buyer and its distributors, as well as their subsidiaries and affiliated companies, their successors, assigns, customers and users of products sold by Buyer. Seller agrees that, promptly upon notice from Buyer, it will replace or repair defective Goods or correct defects in services provided, without expense to Buyer. Should Seller fail in a timely fashion to correct defects in or replace non conforming Goods or services, Buyer, after reasonable notice to Seller, may make such corrections or replace such Goods or services and charge Seller for all costs incurred by Buyer in doing so.
- 9. Inspection/Testing** Payment by Buyer for any Goods shall not constitute acceptance of the Goods by Buyer. Buyer shall have the right to inspect all Goods and to reject any or all of said Goods which are in Buyer's judgment defective or nonconforming, regardless of the time elapsed between delivery of the Goods and Buyer's inspection. Goods rejected and Goods supplied in excess of quantities called for under the Order may be returned to Seller at Seller's expense and, in addition to Buyer's other rights. Buyer shall have the right to collect from Seller all expenses of unpacking, examining, re-packing and reshipping such Goods. If Buyer receives Goods whose defects or nonconformity are not apparent on examination, Buyer reserves all rights with respect to the Goods. Nothing contained in an Order shall relieve Seller from its obligations of testing, inspection and quality control of the Goods.

**10. Indemnification** Seller agrees to indemnify and hold harmless Buyer and its distributors, as well as their subsidiaries and affiliated companies, their successors, assigns, customers and users of their products, from and against all damages, claims, suits, demands or losses of any kind (including costs and attorneys' fees) arising out of or alleged to have arisen out of the use of the Goods or Seller's performance or lack of performance of its obligations under an Order, including breach of warranty and product liability. This obligation shall include any costs arising out of any voluntary or involuntary recall, recovery or withdrawal of products from the market.

**11. Price** Seller warrants that the prices for the Goods charged to Buyer are not higher than those currently available to any other customers of Seller for the same or similar articles in similar or larger quantities. If Seller reduces its price for such Goods to any third party at any time prior to final delivery of the Goods then Seller agrees to reduce the price for the Goods correspondingly. Seller warrants that prices shown on the Order are complete, and that no additional charges of any type, including but not limited to charges for tooling, packaging, labeling, shipping, customs duties, taxes, storage or insurance, shall be added without Buyer's express written consent.

**12. Books and Records; Audit** Seller shall keep full and accurate books of account and all documents and other materials relating to any Goods sold or services furnished to Buyer and Seller's performance under this Order for a period of not less than two years after each shipment date. Buyer's representative shall have the right, upon reasonable written notice, to audit and inspect such books, documents and other materials during normal business hours, at a time and place agreed to by seller and buyer, to verify Seller compliance with all the terms and conditions of the Order, including compliance with all applicable laws. Absent specific cause, Buyer shall not undertake such audit more than twice per calendar year. If any audit reveals that Seller has erroneously charged Buyer \$1,000 or more, then Seller shall also reimburse Buyer its actual costs incurred in examining Seller's books.

**13. Infringement Indemnification** Seller agrees to indemnify and hold harmless Buyer and its distributors, as well as their subsidiaries and affiliated companies, their successors, assigns, customers and users of their products, from and against all damages, claims, suits, demands or losses of any kind (including costs and attorneys' fees) resulting from any claim that the manufacture, use, sale or resale of any Goods supplied under an Order infringe any patent, design, trade name, trade dress, trade mark, copyright, trade secret or any other right or entitlement of any third party. Seller shall, when notified of any such claim or action, defend any action or claim of such infringement at its own expense. In the event the sale and/or use of any Goods is enjoined, Seller shall at its own expense and at Buyer's option, procure for Buyer the right to continue using such Goods or replace such Goods with equivalent non-infringing goods, or modify such Goods so that they become non-infringing, or remove the Goods and refund the purchase price, including transportation, installation, removal and other charges incidental thereto.

**14. Insurance; Work on Buyer's Premises** Seller shall maintain product liability insurance in amounts deemed necessary by Buyer and with insurers reasonably acceptable to Buyer. In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, on Buyer's property, or property of Buyer's customers, the Seller agrees to comply with Buyer's "Supplementary Terms and Conditions for Purchase Orders Issued for Construction, Installation or Repair Work to be Performed on Buyer's Premises", a copy of which, if it is not attached to the Order, may be obtained from Buyer's Purchasing Department. Seller further agrees to maintain insurance, including public liability insurance, completed operations, contractor's liability, automobile liability, worker's compensation and employer's liability, in compliance with Buyer's current insurance requirements, as revised from time to time. Seller shall, upon request, furnish certificates of insurance evidencing the insurance coverage required hereunder and naming Buyer as an additional insured.

**15. Gratuities** Seller hereby represents that neither it nor any of its employees have received or given any gifts or gratuities in connection with any order received from Buyer. If, at any time, Buyer determines that the foregoing representation is untrue, Buyer may terminate any agreements with Seller upon written notice to Seller and Buyer shall have no further obligation to Seller.

**16. Confidentiality** Disclosure by Seller to others of information concerning an Order, the work to be performed hereunder, and Buyer's business plans or information gained from visits to Buyer's facilities may result in the disclosure of information which Buyer considers to be proprietary or confidential. Therefore, Seller shall not, without Buyer's prior written consent, disclose to others any information concerning an Order or any other information concerning Buyer.

**17. Remedies; Applicable Law; Venue** The remedies provided herein are cumulative and in addition to any other remedies provided by law or agreement. Buyer shall have the right to set off any amounts it owes to Seller against any amount owed by Seller to Buyer. A waiver of a breach of any provision of an Order will not constitute a waiver of any other breach hereof. The laws of the State of Iowa govern the Order and all disputes arising out of or related to it. Seller consents to jurisdiction and venue in any federal or state court located within the State of Iowa in any matter related to the Order.

**18. Tooling** Unless otherwise specified in the Order, all tooling and other items required for the performance of Seller's obligations under the Order shall be furnished by Seller at no extra cost and shall be maintained in good condition and repair at Seller's expense. Any special tooling furnished or paid for by Buyer shall be the property of the Buyer and may be removed from the Seller's premises by Buyer at any time upon payment by Buyer of all amounts owed by Buyer to Seller.

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