

**PEARSON CANDY COMPANY
PURCHASE ORDER TERMS & CONDITIONS**

1. ACCEPTANCE. This Purchase Order constitutes an offer by Pearson Candy Company ("Buyer"), which must be accepted on its exact terms. The commencement of performance of this Purchase Order, including without limitation, the shipment of the goods described herein ("Goods"), will be conclusively deemed an unconditional acceptance of this Purchase Order notwithstanding any provision in Seller's commercial forms or elsewhere that such shipment is an accommodation or is being made as a conditional acceptance. This Purchase order must be acknowledged promptly.

2. REVOCATION. Buyer reserves the right to revoke this Purchase Order at any time before acceptance. This Purchase Order is not a firm offer.

3. PRICE. The Goods will be sold to Buyer at the price(s) designated on the reverse side hereof. Except as provided on the reverse side hereof, the price(s) at which Goods are sold to Buyer hereunder are "net" to Buyer and include, without limitation, all costs of packaging, packing, crating, pallets, shipping, transportation, and all federal, state, local taxes and excises.

4. DELIVERY. The Goods will be delivered no later than the date set forth on the reverse side hereof. Time is of the essence. All Goods will be shipped F.O.B. as designated on the reverse side hereof. Any documents necessary to enable Buyer to obtain the Goods from any carrier when tendered will be provided to Buyer.

5. WARRANTIES. Seller warrants that all Goods are free from defects and are not adulterated or misbranded. If the Goods are for human consumption, Seller further warrants that the Goods are not contaminated and are fit for human consumption. Buyer will have the benefits of all expressed and implied warranties made by Seller and all warranties implied at law. No limitation or waiver of any warranty, whether express or implied or implied at law, and no limitation or waiver of any warranty, whether express or implied, or implied at law, contained in Seller's commercial forms or otherwise made by Seller will be effective.

6. INSPECTION. Upon delivery, Buyer will have 10 days within which to inspect, test, and approve the Goods before accepting or paying for them. Acknowledgement of receipt, by any means (including packing slips, and bills of lading) will not constitute acceptance.

7. REJECTION. In the event any Goods delivered fail to conform to this Purchase Order, or in the event delivery is not made as specified in this Purchase Order, or if the quantity shipped does not conform to this Purchase Order, Buyer may at its option, reject the whole, accept the whole, or accept any unit or units and reject the rest. If Buyer rejects any Goods delivered or tendered hereunder, Buyer will notify Seller of such rejection in writing. Any and all Goods rejected will be returned to Seller at Seller's expense; provided, however that Buyer may retain a sample of the Goods tendered for the purpose of having evidence of the type and quality of the Goods tendered. Any costs incurred by Buyer for the inspection, packing, unpacking, examining, storing, and/or reshipping of incorrect or non conforming Goods will be reimbursed to Buyer by Seller.

8. TERMINATION. Buyer may terminate, cancel, or suspend the agreement made by Seller's acceptance hereof, in whole or in part, if (a) Seller breaches or fails to perform under such agreement, or (b) Seller becomes insolvent or files, or has filed against it, a petition in bankruptcy. Nothing contained in this Paragraph 8 constitutes an election of remedies by Buyer with respect to any breach of or failure to perform under such agreement by Seller or limits any of Buyer's rights or remedies with respect to any such breach or failure.

9. CUSTOM & USAGE. No course of performance, nor any course of dealing or usage of trade, will vary the express terms of this Purchase Order.

10. REGULATORY COMPLIANCE. Seller represents and warrants that all Goods have been manufactured and sold in compliance with the requirements of all federal, state and local laws, rules and regulations.

11. PACKAGING. Seller will, at its cost (and without charge to Buyer) suitably pack all Goods for shipment to Buyer in such manner as ensures safe and undamaged delivery Buyer and satisfies all carrier requirements. Each container must be marked with Buyer's order number and a packing list showing Buyers order number, and all labels required by federal, state, local law, rule, or regulation.

12. FORCE MAJEURE. Failure of Seller to make or Buyer to take all or any part of any delivery of Goods hereunder will not subject Seller or Buyer to liability to the other if such failure is due to acts of God, war, acts of terrorism, labor difficulties, embargoes, shortages of transportation equipment, compliance with any law regulation or order of public authority, or any other cause beyond the reasonable control of Seller or Buyer, as the case may be. If Seller is unable to meet the delivery schedule provided by Buyer due to conditions beyond Seller's control, Buyer may refuse shipment on any other schedule unless such schedule has been submitted to and approved by Buyer in writing.

13. NON-CONFORMING GOODS. Without limiting anything contained in Paragraph 7, all Goods which do not conform to this Purchase Order, or which are shipped contrary to the instructions contained in this Purchase Order, or which are in excess of the quantities described in this Purchase Order, or which are shipped in containers which do not conform to the instructions set forth in this Purchase Order (or, in the absence of such instructions, in recognized standard containers), or which allegedly violate any statute, ordinance or administrative order, rule or regulation, and any goods substituted for Goods, may be rejected by Buyer and returned to Seller at Seller's expense, or held by Buyer at Seller's expense and risk. Buyer may charge Seller, and Seller will reimburse Buyer, for all expenses incurred by Buyer in connection with inspecting, unpacking, examining, repacking, storing and reshipping any Goods or other goods rejected hereunder. Nothing contained herein will limit the rights and remedies of Buyer by reason of any nonperformance or breach of, or default under, the agreement created by the Seller's acceptance hereof.

14. RISK OF LOSS. All risk of loss and damage to the Goods will pass from Seller to Buyer when the Goods have been delivered to Buyer at Buyer's place of business.

15. INSURANCE. Seller will, at its sole cost and expense, maintain the following insurance coverages: (a) worker's compensation insurance as required by law; (b) employer's liability insurance with limits of liability of at least \$500,000 per accident or disease and \$500,000 aggregate by disease and a waiver of subrogation in favor of Buyer if permitted by law; (c) commercial general liability insurance which (i) includes coverage for personal and advertising injury, products liability, completed operations, and broad form contractual liability; (ii) provides coverage on an occurrence basis, (iii) names Buyer as an additional insured, (iv) is primary and "first dollar" vis-à-vis any insurance coverage(s) maintained by Buyer, (v) is provided by an insurance company that has an A.M. Best Financial Strength rating of A-,VII or greater, and (vi) has coverage limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products & completed operations aggregate; (d) commercial automobile liability insurance which (i) provides coverage for all owned, non-owned and hired vehicles, (ii) is provided by an insurance company that has an A.M. Best Financial Strength rating of A-,VII or greater, and (iii) has coverage limits of not less than (1) \$1,000,000 combined single limit, or (2) \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per person, and \$1,000,000 property damage; and (e) umbrella/excess liability insurance which (i) is provided by an insurance company that has an A.M. Best Financial Strength rating of A-,VII or greater, and (ii) has coverage limits of not less than \$1,000,000 per occurrence and \$1,000,00 aggregate. Upon acceptance of this Purchase Order, and from time to time thereafter upon request by Buyer, Seller will cause the insurer(s) providing such coverages to issue a certificate to Buyer confirming that such coverages are in full force and effect and that before any cancellation, modification or reduction in any of such coverages, the insurer(s) will give thirty (30) days prior written notice of such proposed cancellation, modification or reduction to Buyer. Seller waives for itself and its insurers all rights of recovery against Buyer for losses or damages covered by such coverages.

16. INDEMNIFICATION. Seller will indemnify Buyer and hold Buyer harmless from and against any and all losses, costs and damages, however characterized or described, including reasonable attorneys fees, suffered or incurred by Buyer in connection with, arising from, or directly or indirectly relating to: (a) any actual or alleged infringement of any patent, trademark, trade name, copyright or other intellectual property right by the Goods or Buyer's purchase, use, display, advertising or resale of the Goods; (b) death, bodily injury, personal injury or property damage resulting from or allegedly resulting from any use or consumption of the Goods; (c) any failure of any Goods to comply with their specifications or the express or implied warranties of Seller; (d) if the Goods are for human consumption, any actual or alleged contamination or adulteration of the Goods or lack of fitness of the Goods for human consumption; (e) any actual or alleged violation by any Goods, or the

manufacture, sale, packaging or labeling of any Goods, of any applicable law, statute, ordinance or administrative order, rule or regulation, including, without limitation, any law, statute, ordinance, order, rule or regulation concerning the contamination or adulteration of the Goods or the fitness of the Goods for human consumption; or (f) any breach by Seller of any of the terms of this Purchase Order. In connection with the foregoing, Seller will, upon request by Buyer, immediately assume the handling, adjustment and defense of any claim, allegation, suit or action covered by the foregoing. Buyer will have, and hereby reserves, the right to participate in the handling, adjustment and defense of any such claim, allegation, suit or action.

17. NON-WAIVER. Waiver by either Seller or Buyer of any breach by the other of any provision of this Purchase Order or the agreement created by Seller's acceptance hereof will not be deemed a waiver of future compliance therewith, and such provision will remain in full force and effect.

18. EXCLUSIVE TERMS. With the exception of warranties made by the Seller to Buyer which are not set forth herein, this Purchase Order is the final statement of the agreement between Buyer and Seller with regard to the purchase and sale of the Goods and supersedes any and all proposals or communications or other understandings or agreements, whether oral or written, between Buyer and Seller with regard thereto. No change to or modification of any term or condition set forth herein will be valid, binding or of any effect unless in made writing and signed by Buyer. **NO TERM OR PROVISION CONTAINED IN ANY OTHER DOCUMENT OR INSTRUMENT, INCLUDING SPECIFICALLY, BUT NOT EXCLUSIVELY, ANY ORDER ACKNOWLEDGEMENT OR INVOICE PROVIDED TO BUYER BY SELLER, WHETHER CONSISTENT OR INCONSISTENT, IN WHOLE OR IN PART, WITH THE TERMS AND PROVISIONS SET FORTH HEREIN WILL BE OR BECOME PART OF THE AGREEMENT BETWEEN BUYER AND SELLER OR BE OR BECOME BINDING UPON BUYER, AND ALL SUCH TERMS AND PROVISIONS ARE HEREBY EXPRESSLY REJECTED BY BUYER.**

19. ASSIGNMENT. This Purchase Order may not be assigned or delegated by Seller without the written consent of Buyer.

20. PROPRIETARY RIGHTS. Buyer reserves the right, at its option, to return, at Seller's expense and for full credit, any Goods, and to cancel this Purchase Order (in whole or in part) where any claim is made (whether founded or unfounded) that the purchase, display or sale of any Goods by Purchaser infringes upon or violates any patent, design, trade name, trademark, copyright, right of privacy or any other tangible or intangible personal, proprietary or property rights.

21. APPLICABLE LAW. The rights and obligations of the parties hereunder will be construed and enforced in accordance with the laws of the State of Minnesota.