

TERMS AND CONDITIONS OF SALE

Please read these Terms and Conditions of Sale (these “*Terms*”) carefully. These Terms materially affect the parties’ obligations. Kruger Family Industries, LLC and its subsidiaries including TriEnda Holdings, LLC and Penda Corporation (“*Seller*”) is bargaining for and will do business with Buyer (as defined below), as it relates to the matters contained in this Agreement (as defined below), only pursuant to these Terms. Seller’s acceptance of orders for the purchase of any goods or services (together, the “*Offerings*”) is expressly subject to and conditioned on the buyer of the Offerings (“*Buyer*”) agreeing to these Terms.

- 1. ACCEPTANCE; CONTRARY TERMS; ENTIRE AGREEMENT.** All orders for Offerings are subject to Seller’s acceptance of such order at its office. Any price quotation referencing these Terms expires if not accepted by Buyer within fifteen (15) days after the date of the quotation, unless otherwise stated by Seller in such quotation. Buyer’s order is accepted only pursuant to these Terms. The provisions of any purchase order or other writing inconsistent with these Terms will not constitute a part of the contract of sale. Seller’s acceptance of any order for the Offerings is conditional on Buyer’s agreement to these Terms. If any of these Terms are not acceptable to Buyer, Buyer shall promptly notify Seller thereof. If Seller does not receive Buyer’s written objection to these Terms within ten (10) days after Buyer receives the document referencing these Terms from Seller, or if Buyer accepts delivery of any Offerings, these Terms shall be deemed irrevocably accepted in their entirety by Buyer. Seller’s failure to object to provisions contained in any purchase order or communication from Buyer shall not be construed as an acceptance of any such provision or as a waiver of any term of these Terms. WITHOUT LIMITING THE FOREGOING, SELLER HEREBY EXPRESSLY OBJECTS TO ALL TERMS THAT ARE ADDITIONAL OR CONTRADICTORY TO THESE TERMS, REGARDLESS OF WHETHER SUCH TERMS ARE SPECIFIED IN ANY OTHER EMAIL, ACKNOWLEDGEMENT, PURCHASE ORDER, CONFIRMATION, OR OTHER DOCUMENT SUPPLIED BY BUYER, INCLUDING WITHOUT LIMITATION THOSE TERMS AND CONDITIONS REGARDING WARRANTY AND INDEMNITY. NO ADDITIONAL OR CONTRADICTORY TERMS WILL BE EFFECTIVE UNLESS EXPRESSLY AGREED TO IN A WRITING HAND-SIGNED BY SELLER. UPON BUYER’S RECEIPT OF AN ORDER ACKNOWLEDGEMENT FROM SELLER, BUYER’S ORDER WILL BE NON-CANCELLABLE BY BUYER UNLESS SELLER CONSENTS THERETO IN A WRITING HAND-SIGNED BY SELLER. NO ONLINE OR ELECTRONIC TERMS OR CONDITIONS OF BUYER WILL BE BINDING ON SELLER EVEN THOUGH SUCH TERMS WERE “ACCEPTED” IN ORDER TO ACCESS OR USE A SYSTEM. These Terms, together with the email, price quotation, order acknowledgement, or other similar form issued by Seller and referencing or relating to these Terms (together, this “*Agreement*”) is intended by the parties to be the final expression of their agreement and are intended also as a complete and exclusive statement of the terms and conditions of the matters thereof and hereof.
- 2. CHANGES; CANCELLATIONS.** Requests by Buyer for cancellation, termination, modification, suspension, or delay in shipment of Buyer’s order are subject to acceptance or rejection by Seller in its sole discretion. Such requests will not be accepted on terms that do not fully indemnify and reimburse Seller against any loss associated therewith. Such indemnity must include recovery of all costs incurred, including normal indirect and overhead charges, and a normal profit. Seller generally will not approve any change to an order proposed by Buyer less than forty-five (45) days prior to shipment. Seller may cancel any Order in accordance with Section 18.
- 3. PRICES.** Unless Seller specifically agrees to hold prices open for a length of time on Seller’s price quotation, all prices are subject to change without notice to Buyer and any unshipped balances on purchase orders will be invoiced to and paid by Buyer at Seller’s prices in effect at the time of delivery. All prices are exclusive of freight, shipping, drayage, boxing, and crating charges, both to and from Seller’s facility, and all such charges are the responsibility of, and will be paid by, Buyer. Unless otherwise specified in this Agreement, prices stated in this Agreement do not include any manufacturers, sales, use, or excise taxes, charges or duties, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority on or measured by any transaction between Seller and Buyer, and Buyer shall pay all such amounts. In the event Seller is required to pay any of the foregoing amounts, Buyer shall reimburse Seller therefor. Prices may be increased by any increase in any of the foregoing amounts, as well as any increase in tariffs, duties, or other similar amounts, regardless of whether any such amounts were included in quoted prices. Prices stated in this Agreement may not include travel or other out-of-pocket expenses incurred by Seller in connection with the performance or delivery of the Offerings, and Buyer shall reimburse Seller for all such expenses. Seller makes no warranty with respect to price, including without limitation as to the prices charged by Seller to other buyers, and the terms of such sales.
- 4. PAYMENT.** All payments are due in accordance with the payment terms agreed upon in writing between Buyer and Seller. If no such payment terms have been agreed upon, all payments are due in full net 30 days from the date of Seller’s invoice. Seller reserves the right to require full cash payment in advance or at the time of delivery whenever Seller, in its sole discretion, develops doubt as to Buyer’s financial responsibility; Seller will not in such event be liable for non-performance. Buyer shall incur a service charge if Seller receives payment after the due date, calculated as follows: one and one-half percent (1.5%) of the invoice amount if Seller receives the payment between one (1) and thirty (30) days after the due date; three percent (3%) if Seller receives the payment between thirty-one (31) and sixty (60) days after due date; and so on. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery or performance of any Offerings if Buyer fails to pay any amounts when due and such failure continues for ten (10) days following such due date.
- 5. SHIPMENT; RISK OF LOSS.** Unless otherwise specified in this Agreement, all shipments are EXW (Incoterms 2010) Seller. Risk of loss will pass to Buyer at the time an Offering is tendered for shipment. In the absence of agreed upon shipping instructions, Seller may use its discretion as to the selection of shipping services and routes. Seller assumes no responsibility in connection with the shipment of the Offerings to Buyer. Title to goods that comprise the Offerings will remain with Seller until Seller receives full payment therefor. Shipping dates on any purchase order or material release order are estimates only. Seller will use reasonable efforts to meet the estimated shipping date, subject to Buyer’s prompt provision of all necessary, complete and correct specifications, information and data, but Seller may not be held responsible for failure to meet such estimated date. If Buyer requires special production service for unusual shipments, an additional charge may be imposed, as agreed upon by the parties. With respect to any goods included in the Offerings, if Seller delivers up to ten percent (10%) more or less than the quantity ordered by Buyer, Buyer shall accept such delivery and pay for such excess quantities.
- 6. CERTAIN BUYER OBLIGATIONS.** Buyer shall (a) cooperate with Seller in all matters relating to the Offerings and provide access to Buyer’s premises, and to such office accommodations and other facilities as Seller requests for the purpose of performing or delivering any of the Offerings;

(b) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that Seller deems necessary in order to complete and provide the Offerings in accordance with this Agreement; and (c) provide in a timely manner such customer materials or information that Seller requests in order to complete and provide the Offerings, and Buyer shall ensure that such customer materials and information are complete and accurate in all respects.

7. **COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable federal, state and local laws, regulations, orders, and ordinances. Buyer represents and warrants that Buyer is and shall at all times remain in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes (“*Economic Sanctions Laws*”) against designated countries, entities, and persons (“*Embargoed Targets*”). Buyer is not an Embargoed Target or subject to any Economic Sanctions Law, and Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver Offerings or any portion of Offerings to an Embargoed Target, or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

8. **LIMITED WARRANTY.** Seller warrants that at the time of shipment of goods or performance of services the Offerings will be free from material defects in materials and workmanship. The warranty expressly provided herein may only be asserted by Buyer and may not be asserted by Buyer’s customers or other users or beneficiaries of the Offerings. THIS LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY. OTHER THAN THE FOREGOING WARRANTY, SELLER HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE OFFERINGS (WHETHER GOODS OR SERVICES) INCLUDING ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES ON BEHALF OF SELLER OTHER THAN THOSE EXPRESSLY STATED HEREIN.

Products manufactured by a third party (“*Third Party Product*”) may constitute, contain, be contained in, incorporated into, attached to, or packaged together with the Offerings. Third Party Products are not covered by the limited warranty set forth in this Section. For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

9. **LIMITATION OF REMEDIES AND DAMAGES.** All claims for shipping error or freight damage must be made in writing within ten (10) days of receipt of the Offering with respect to which the claim is being made, and must specify the quantity and condition of the Offering that was received by Buyer; failure to make any such claims within such time will be deemed to constitute Buyer’s irrevocable waiver of any such claims. Seller reserves the right to accept or reject any such claim in whole or in part. If Buyer believes that any goods delivered as part of the Offerings are defective, Buyer shall notify Seller of the same in writing within thirty (30) days of Buyer’s receipt thereof, and Buyer shall, at Buyer’s sole cost and expense, return such Offerings to Seller within ten (10) days of Seller’s written preauthorization for such return. Buyer may not return any Offerings without Seller’s express written preauthorization. Seller’s liability and Buyer’s sole and exclusive remedy hereunder will be limited to repair, replacement, or credit, at Seller’s option, with respect to any Offerings that Seller determines in its sole discretion is actually defective. Seller will not be liable for a breach of warranty if (a) the defect arises because Buyer fails to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Offering, (b) Buyer alters or repairs the Offering without the prior written consent of Seller, or (c) the Offering becomes defective or inoperative due to normal use, accident, misapplication, abuse, or misuse. SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, COSTS OF SUBSTITUTE GOODS AND SERVICES, MACHINE WORK OR LABOR COSTS, ARISING FROM THE SALE, USE, OR INSTALLATION OF THE OFFERINGS, FROM OFFERINGS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER GOOD, OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE SALE, USE, OR INSTALLATION OF THE OFFERINGS, EVEN IF SELLER IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID TO SELLER BY BUYER FOR THE OFFERINGS WITHIN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO BUYER’S CLAIM. THE LIMITATIONS SET FORTH HEREIN SHALL BE VALID AND ENFORCEABLE NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH HEREIN.

10. **INTELLECTUAL PROPERTY OWNERSHIP.** All intellectual property rights, including copyrights, patents, patent disclosures, inventions (whether patentable or not), trade dress, trade names, logos, corporate names, domain names, trademarks, service marks, trade secrets, know-how, and other confidential information, together with all derivative works and all goodwill associated therewith, and all other rights in and to all the Offerings, documents, work product, and other materials (whether or not copyrightable) that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing under this Agreement, shall be exclusively owned or otherwise licensed by Seller. Except as otherwise expressly and specifically provided, no license, transfer, or assignment of proprietary rights from Seller to Buyer will occur as a result of this Agreement or any order. Buyer warrants that any trademarks Buyer requests Seller to affix to any Offering is owned or authorized for use by Buyer. Buyer shall not contest, or assist others in contesting, the validity or ownership of Seller’s intellectual property.

11. **TOOLS.** All dies, tools, patterns and the like involved in the manufacture of the Offerings are and will remain the property of Seller, except that any dies, tools, patterns and the like specifically ordered and paid for by Buyer (“*Buyer Tooling*”) will remain the property of Buyer. Seller will return any Buyer Tooling to Buyer upon request after all amounts owed to Seller have been paid in full; provided, however, that if Buyer does not request in writing and accept delivery of the Buyer Tooling within thirty (30) days following the earlier of (a) the expiration or termination of this Agreement, (b) the conclusion of the project requiring the use of the Buyer Tooling, or (c) Seller’s written request, then Seller shall thereafter own the Buyer Tooling and may use or

dispose of the Buyer Tooling in Seller's sole discretion, and all of Buyer's rights in and to the Buyer Tooling shall cease and be of no further effect. Buyer is responsible for insuring all Buyer Tooling.

12. **INDEMNITY.** Buyer shall indemnify, defend, and hold Seller, its affiliates, and its and their respective directors, officers, employees, representatives, agents, customers, users, successors, and assigns harmless against all claims, damages, losses, liabilities, costs, and expenses, including all attorneys' fees, paid or incurred by Seller in connection with any claim whatsoever, including without limitation any claim of infringement of a patent, copyright, trademark, trade secret, or other proprietary right, and claims of product liability, personal injury, property damage, and product defect, which arises out of or is related to Buyer's or its direct or indirect customers' use of the Offerings, negligence, willful misconduct, violation or breach of any term of this Agreement, fraud, or violation of law, or from Buyer's specifications for the Offerings.
13. **PRODUCTION LOCATION.** Seller reserves the right to produce any order at any of its manufacturing locations unless a separate written agreement is in place between Buyer and Seller specifying a single production location.
14. **SECURITY INTEREST.** Buyer hereby grants to Seller and Seller hereby retains a lien on and a security interest in and to all of the right, title, and interest of Buyer in, to, and under the Offerings and accessories and additions thereto sold by Seller to Buyer, wherever located, whether now existing or hereafter acquired, all spare parts and components therefor, and all proceeds of the sale or other disposition including, without limitation, cash, accounts, contract rights, instruments, and chattel paper. If requested by Seller, Buyer shall execute one or more financing statements pursuant to the Uniform Commercial Code in a form satisfactory to Seller. In the event Buyer is in default under this Agreement, Seller will have the remedies of a secured party under applicable law, including without limitation the Uniform Commercial Code, and Seller may thereupon enter the premises of Buyer and remove and repossess all Offerings. The security interest granted under this Section constitutes a purchase money security interest under applicable law.
15. **SETOFF.** Seller may set off any amount due from Buyer, whether or not under this Agreement, against any amount due Buyer hereunder. Buyer may not set off any amount due from Seller, whether or not under this Agreement, against any amount due Seller hereunder without Seller's prior written consent.
16. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller and Seller's affiliates, customers, and suppliers, including without limitation specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller is entitled to injunctive relief for any violation of this Section without the necessity of proving the existence, amount, or insufficiency of damages or posting bond. This Section does not apply to information that is lawfully obtained by Buyer on a non-confidential basis from a third party without confidentiality obligations with regards to such information.
17. **SOLICITATION OF PERSONNEL.** For so long as there is any order for Offerings in effect between Buyer and Seller and for twelve (12) months thereafter, Buyer shall not solicit for employment any employee or contractor of Seller. Seller is not to be restricted from soliciting any employee, contractor, or customer of Buyer.
18. **TERMINATION.** In addition to any remedies that may be provided under these Terms or applicable law, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer for any reason or no reason at all, including without limitation if Buyer (a) fails to pay any amount when due under this Agreement, (b) has not otherwise performed or complied with any term of this Agreement, in whole or in part, or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
19. **SURVIVAL.** The parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, limitations on liability, confidentiality, and non-solicitation of employees, will survive any termination or expiration of this Agreement.
20. **EXCUSE FROM PERFORMANCE.** Seller shall not be liable for any costs, expenses, or damages of any nature (whether general, consequential, incidental, punitive, liquidated, or otherwise) if performance or delivery of any Offering is rendered impracticable by any accident, breakdown, sabotage, riot, insurrection, war, delay, interruption in or failure of sources or subcontractors to supply materials and equipment, strike, labor or transportation problem, act of God, or other cause or condition, whether of like or different nature, that is beyond Seller's reasonable control, or orders, contracts, priorities, directives, requisitions or requests of the federal or state governments, whether or not voluntarily assumed. If any such event renders Seller's delivery or performance of any Offering impracticable, at Seller's option, (a) the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay, or (b) Seller will be excused from performance and Buyer shall promptly, upon Seller's request, pay Seller for any Offerings then completed (whether fully or partly completed).
21. **INSURANCE.** During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect in amounts and types satisfactory to Seller. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance evidencing Buyer's insurance coverage. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Under no circumstances will Seller be required to provide additional insured status to Buyer nor will Seller's insurer be required to waive subrogation rights against Buyer or Buyer's insurer. Seller will only be required to maintain insurance that is consistent with its own internal policies.
22. **NOTICES.** Any notice relating to this Agreement must be in writing and will be considered given within three (3) days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered.

- 23. ASSIGNMENT; DELEGATION.** Buyer may not assign, whether voluntarily or involuntarily, by merger, consolidation, dissolution, change of control, or otherwise this Agreement or any of Buyer's rights hereunder nor delegate any of Buyer's obligations under this Agreement without Seller's written consent. Any purported assignment or delegation in violation of this Section will be void. Seller may assign this Agreement and any of Seller's rights hereunder and delegate any of Seller's obligations under this Agreement. If Seller assigns this Agreement or delegates any obligations under this Agreement (whether in whole or in part), Buyer shall, as relates to such part that was assigned or delegated, release Seller from all liability under this Agreement and hold the assignee solely responsible for performance of all such assigned or delegated obligations.
- 24. APPLICABLE LAW.** The validity, construction, and enforcement of this Agreement is governed by and interpreted under the laws of the State of Delaware, including, without limitation, its provisions of the Uniform Commercial Code. The United Nations Convention on Contracts for the International Sales of Goods (CISG) does not apply to this Agreement. Any controversy or claim arising out of or in connection with this Agreement will be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration will occur in the State and County in which Seller's headquarters is located, and will be conducted in the English language. Notwithstanding the foregoing, any claim by Seller for collection of unpaid amounts may be pursued through any available method and in any available venue without first proceeding to arbitration pursuant to this Section, including without limitation through litigation in the State or Federal courts located in the State in which Seller's headquarters is located, and Buyer hereby irrevocably submits to the personal jurisdiction of such courts. Buyer shall pay Seller any collection fees and all attorneys' fees incurred by Seller in enforcing this Agreement or defending against any claim for breach of this Agreement.
- 25. AMENDMENT; WAIVER.** No amendment or modification of any term or condition will be valid or binding upon Seller unless approved by Seller in a writing hand-signed by Seller. Unless Seller expressly indicates otherwise in such hand-signed writing, such modification is effective only in that instance and only for the purpose for which it is made and is not to be construed as a modification on any future occasion or of any future order or agreement. Clerical and stenographic errors are subject to correction by Seller. No waiver by Seller of any of the terms of this Agreement is effective unless explicitly set forth in a writing signed by Seller. The failure of Seller to insist upon a strict performance of any term of this Agreement will not be considered as a continuing waiver of any such term or condition, or any other term or condition, or any of Seller's rights. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 26. SEVERABILITY.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination will not affect the remainder of this Agreement, which will remain in full force and effect.
- 27. INDEPENDENT CONTRACTORS.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement may be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties. No party has the authority to contract for or bind the other party in any manner whatsoever.
- 28. NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.