



# Terms of delivery and payment - Klöckner Pentaplast GmbH & Co. KG

## A. General conditions

### I. CONCLUSION OF A CONTRACT

- Our terms of delivery and payment exclusively apply; purchase terms of the buyer which contradict or differ from our terms of delivery and payment will not be accepted by us, except in cases where we have approved those in writing. Our terms of delivery and payment also apply in cases where we conduct the delivery to the buyer without any reservations and in knowledge of the contradicting or differing purchase terms.
- Our offers are subject to alteration. To be effective any alterations must be made in writing.

### II. TOOLS AND IMPRINTERS

All tools and imprints remain our property, irrespective of any participation of the buyer in the manufacturing costs or any claims on design rights the buyer may have. All proprietary, industrial and intellectual property rights for our designs and models belong exclusively to us.

### III. PRICES / CONDITIONS OF PAYMENT

- Unless agreed otherwise, our prices shall be calculated in EURO, EXW (INCOTERMS® 2010), without insurance, including normal packaging and including the sales tax applicable on the day of delivery. Special packaging is invoiced at cost. The costs of agreed and prescribed inspection shall be charged to the buyer. We reserve the right to change prices due to increases or decreases of costs in the amount of such changes in costs, in particular concerning the change of material costs or raw material prices, which occur between the conclusion of the contract and delivery and for which we are not responsible and which were not predictable for us at the time of the conclusion of the contract. We will demonstrate such changes in costs upon request of the buyer.
- As long as any order confirmation does not state otherwise, payments shall be due net (without any deductions) within 30 days from the date of invoice. Concerning any default of payments the statutory provisions will apply.
- The buyer may only offset uncontested or legally valid claims or claims that are acknowledged by us. He has a right of retention only insofar as his counterclaims are based on the same contractual relationship.
- In case our claim to payment is jeopardised by subsequent circumstances which result in a material deterioration of the assets of the buyer, we are entitled to accelerate - irrespective of the term - the maturity of any bills of exchange taken in payment. If an application to open insolvency proceedings on the assets of the buyer is made, we are entitled to withdraw from the contract.
- If the buyer is in default with his payments and/or in the case of clause 4 we can revoke the direct debit authorisation according to clause A IV. 10 and demand advance payment for any outstanding deliveries.
- The buyer can avert the legal consequences named in clauses 4 and 5 by furnishing security interests of an amount equal to that of our jeopardised claim for payment.

### IV. RETENTION OF OWNERSHIP

- All goods supplied shall remain our property (reserved goods) until all claims are satisfied, in particular the outstanding claims, to which we are entitled within the framework of the business relationship. This also applies to future and conditional claims, e. g. from acceptor's bills.
- We are entitled to take back the reserved goods if the buyer is in breach of the contract, especially in cases of default payment. The taking back of the reserved goods only constitutes a cancellation of the contract if we state this in writing. We are only entitled to sell the reserved goods to another party after cancellation of the contract.
- The processing and conversion of the reserved goods is carried out for us as a manufacturer in the meaning of § 950 of the German Civil Code (BGB) without that the buyer acquires any claims in regard to the processing and conversion against us. The processed and converted goods constitute reserved goods in the meaning of clause 1.
- When the reserved goods are processed, combined or blended with other goods by the buyer, we acquire co-ownership in the resulting goods in proportion of the invoice value of the reserved goods to the other goods used. If our property ceases to exist as a result of processing, combining or blending, the buyer is deemed to have assigned to us the proprietary or accessory title in the resulting goods in the proportion of the invoice value of the reserved goods to the invoice value of the other goods used. Our rights of co-ownership are those of reserved goods in the meaning of clause 1.
- The buyer is obliged to hold the reserved goods in safe custody free of charge and to maintain and repair those at its own cost as well as to insure those against deterioration, destruction and loss to an extent expected of a prudent businessman. The buyer herewith assigns to us any insurance claims or other compensation claims due to a deterioration, destruction or loss of the reserved goods. We hereby accept this assignment.
- The buyer may only resell the reserved goods in the course of ordinary business transactions as long as he is not in default of payment, provided that he reserves the title to the goods, and the claims from the resale are transferred to us in line with clauses 7 and 8. He is not entitled to any other disposal of the reserved goods. Using the reserved goods to meet obligations of contracts for work and labour and contracts for work and materials also constitutes a resale in the meaning of this section.
- The receivables of the buyer from the resale of the reserved goods are herewith assigned to us. They shall serve as security interests to the same extent as the reserved goods in the meaning of clause 1.
- If the reserved goods are resold by the buyer together with other goods, then the receivables from the resale are assigned to us in the proportion of the invoice value of the reserved goods to the invoice value of the other goods used. On the resale of goods on which we have a co-owner's interest (clause 4) a portion of the claim equal to our co-ownership share shall be assigned to us.
- As far as there exists a ban of assignment of the purchase price claim in regard to the resale between the buyer and its customer, the buyer has to notify us immediately about this fact and may not conduct the resale for the time being. In this case we are entitled to prohibit the resale as long as the buyer cannot provide us with another adequate security interest for our outstanding claims.
- The buyer is entitled to collect claims from the resale, unless we revoke the direct debit authorisation in the cases named in clauses A. III. 4 and A. III. 5. At our request he undertakes to inform his customer of the assignment to us immediately - unless we do not do so ourselves - and to provide us with all the necessary information and documentation to collect. In no way is the buyer entitled to assign the receivables; this also applies to all types of factoring business by virtue of our direct debit authority.
- The buyer must inform us immediately of any distraint or other impairment of goods by third parties in order to enable us to file a claim according to § 771 of the German Civil Procedural Code (ZPO). As far as the third party is unable to reimburse our judicial and extra-judicial costs that have been incurred by us having to make such a claim according to § 771 ZPO, the buyer shall be liable for any damages in this respect.
- If the value of the existing security interest exceeds that of the assignment to us by more than 10% we undertake to release the excess security interest in the form of our choice.
- If the right of retention or the assignment according to the applicable law in the territory in which the goods are located is not effective, then the security interest corresponding to the right of retention or assignment in the territory is deemed to have been agreed. The buyer shall take and shall participate in taking all necessary measures to substantiate and maintain such rights.

## B. Execution of the delivery

### I. DELIVERY PERIOD / DELIVERY DEADLINE

- If not otherwise agreed between us and the buyer the delivery will be ex works (EXW - INCOTERMS® 2010).
- The agreed delivery period commences with the date of our order confirmation, however not until all technical details have been clarified. The same applies to delivery deadlines.
- The dispatch date ex works is decisive for the observance of delivery times and delivery deadlines. If the goods cannot be dispatched in time without us being culpable, then advising readiness to deliver is deemed to constitute compliance with the delivery periods and deadlines.
- If we are prevented from fulfilling our obligations by unforeseen events which after exercising due care are beyond our reasonable control and affect us or our suppliers, e.g. war, force majeure,

internal unrest, natural disasters, accidents, other operational disturbances, or the delay in the delivery of essential material or raw materials, the delivery time is extended by the period of the hindrance as well as an appropriate start-up time. If it becomes impossible or unreasonable for us to make the delivery we can withdraw from the contract; the buyer has the same rights if accepting the goods is unreasonable as a result of the delay. Strikes and lockouts also constitute hindrances beyond our control for which we can not be held responsible in the meaning of this clause.

- A right for the buyer or for us to withdraw from the contract according to clause 4 generally applies to the unfulfilled part of the contract only. In case the partial deliveries made can not be put to use by the buyer, he is entitled to withdraw from the entire contract.

### II. DISPATCH AND PASSAGE OF RISK

- In the absence of other instructions by the buyer we are entitled to determine the mode of dispatch and the means of transportation as well as the forwarding agent or carrier.
- If the loading or the transportation of the goods is delayed due to reasons for which the buyer is responsible, we are entitled at our choice to either store the goods or to deliver the goods to the buyer, in each case at the cost and risk of the buyer. Furthermore we are entitled to take all measures we consider necessary to maintain the goods at the cost of the buyer as well as to invoice the goods as delivered. The statutory provisions with regard to the default in taking delivery remain unaffected.
- In case the parties agreed on a request date for the delivery of the ordered goods and the buyer does not call these goods within four working days from the request date or the parties have agreed on a date for collection of the ordered goods and the buyer does not collect the ordered goods on the agreed date for collection, we are also entitled at our choice to either store the goods or to deliver the goods to the buyer, in each case at the cost of the buyer. Furthermore we are entitled to take all measures we consider necessary to maintain the goods at the cost of the buyer as well as to invoice the goods as delivered. The risk of an accidental loss of the goods will be borne by the buyer from the date the ordered goods have been prepared for collection.
- In the case of damage to goods in transit the buyer shall immediately arrange for identification of the facts with the competent agency.
- With the transfer of the goods to the forwarding agent or carrier or to another person who is entrusted with the dispatch, or at the latest, when the goods leave the factory or warehouse, the risk of an accidental deterioration or an accidental loss is passed to the buyer.

### III. MASS / WEIGHTS / QUALITIES, ETC.

- Deviations from mass, weights, qualities, deficiencies, number of pieces, length, etc. are valid according to DIN or to normal practice.
- As far as legally admissible, no warranty is given in respect of colour fastness. The right to marginal levels of bleaching and fading are reserved.
- We reserve the right to over- or undersupply by up to 10% for customised production and up to 20% in case of deliveries below 500 kg and also for partial deliveries.

### IV. ADVICE ON APPLICATION

Unless expressly agreed otherwise, all technical advice offered by us relating to the technology is without warranty. It does not release the buyer from the obligation to examine the products supplied by us in respect of their suitability, including the suitability for the intended further processing and the intended application.

### V. MATERIAL DEFECTS

- Warranty claims of the buyer require that the buyer has fully complied with its examination and notice requirements according to § 377 of the German Commercial Code (HGB).
- Should the goods supplied have a material defect, we will remedy the defect or provide goods without a defect (rectification of defect) at our sole discretion and provided the buyer has presented us with a justified and orderly notice of this defect.
- The quality of the delivered goods is determined exclusively and finally by the respective product specification. The details which are provided in the product specifications do not constitute any product warranties.
- In case we remedy defects we are obliged to bear all necessary costs for such remedy, such as transport expenses, labour costs and costs for material, except for any increases of costs due to the fact that the goods are delivered to another place than the place of performance.
- For material defects which reduce the value or fitness of the goods in an immaterial manner, our liability is excluded.
- If we fail to rectify the defect the buyer can abate the purchase price, withdraw from the contract and/or demand damages and expenses incurred in vain according to section C. All further claims are excluded.
- Claims regarding material defects are subject to a limitation period of twelve months from the passing of the risk, unless the statutory law does stipulate a longer period or the liability results according to section C.
- The buyer shall give us immediate opportunity to assure ourselves that the defect exists, in particular and at our request he shall provide us with the rejected goods or samples of them.
- If an inspection of goods or an initial sample testing has been agreed, the notification of defects that the buyer could have determined on a careful inspection or initial sample testing shall be excluded.
- The legal rights of recourse on the part of the buyer against us exist only to the extent that the buyer has not made an agreement with his customer which goes beyond the legal claims regarding material defects.

### C. General limitation of liability

- Insofar as it is not otherwise regulated in these conditions, we are only liable for damages or claims for expenses incurred in vain as a result of the infringement of contractual and/or non-contractual obligations only with intent or with gross negligence, including intent or gross negligence of our legal agents, managers or vicarious agents.
- The liability for damages which are caused by intentional or gross negligent behaviour of other vicarious agents is limited to damages which are customary and foreseeable in this type of contract.
- Furthermore, we are liable for negligent infringement of important contractual obligations; also in this case our liability is limited to damages which are customary and foreseeable in this type of contract.
- We undertake no warranty and no procurement risk, except where we have stated so expressly in writing.
- Claims on account of negligent injury of life, body or health or as a result of defects which we have fraudulently concealed or whose absence we have warranted as well as personal damage or damages to privately used property according to the Product Liability Act remain unaffected by this limitation of liability.
- The limitation of liability according to clause 1 also applies to the personal liability of our employees, salary earners, staff, agents and vicarious agents.

## D. Other

### I. APPLICABLE LAW

The legal relationship between us and the buyer shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the Convention of the United Nations dated 11.04.1980 on Contracts for the International Sale of Goods.

### II. PLACE OF PERFORMANCE AND JURISDICTION

The place of performance for both parties is the respective seat of our supplier. Exclusive place of jurisdiction is the competent court in Montabaur. We are also entitled to sue the buyer at his general place of jurisdiction.