



## Terms of Delivery and Payment of Klöckner Pentaplast Schweiz AG

### A. General Provisions

#### I. Conclusion of Contract

1. Deliveries and performances of Klöckner Pentaplast Schweiz AG are carried out solely on the basis of the terms of delivery and payment set out below. Klöckner Pentaplast Schweiz AG hereby expressly objects any purchase terms of the buyer which contradict or differ from its terms of delivery and payment. Changes to these terms of delivery and payment, additional agreements or other differing agreements are only valid if concluded in writing with Klöckner Pentaplast Schweiz AG.
2. Offers made by Klöckner Pentaplast Schweiz AG are subject to alteration. To be valid, all agreements and declarations with substantive legal effect must be executed in writing by the contracting parties.

#### II. Prices and Terms of Payment

1. Unless agreed otherwise, all prices are calculated in Swiss Francs, EXW (INCOTERMS® 2010) without insurance, including standard commercial packaging; value added tax is added at the rate applicable on the date of delivery. Special packaging is calculated at cost price. Agreed or prescribed testing costs are charged to the buyer. Klöckner Pentaplast Schweiz AG reserves the right to invoice price and discount adjustments as a consequence of material and or cost increases which occur between the time of conclusion of the contract and the date of delivery.
2. 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.
3. The buyer may only offset against uncontested or legally valid claims. He has a right of retention only insofar as his counterclaims are based on the same contractual relationship.
4. If the buyer fails to respect the agreed payment dates, he shall be required, without need of a special warning, to pay default interest from the due payment date in the amount of 5% above the current discount rate of the Swiss National Bank. Compensation for further damage is reserved.
5. If circumstances which cause serious doubts regarding the buyer's solvency become known to Klöckner Pentaplast Schweiz AG after conclusion of the contract, Klöckner Pentaplast Schweiz AG is authorized to claim immediate payment, except where binding legal provisions prevent this. Moreover, Klöckner Pentaplast Schweiz AG is entitled to withhold the delivery as long as the buyer does not provide security for the purchase price claim. If the buyer does not provide any security at the request of Klöckner Pentaplast Schweiz AG within an adequate period of time Klöckner Pentaplast Schweiz AG is entitled to withdraw from the contract.
6. If the buyer is in default with his payments, Klöckner Pentaplast Schweiz AG is authorized - without any limitation of its statutory rights - to cease further processing of the delivered goods and to retain deliveries that are ready for dispatch until new terms of payment and delivery have been agreed and Klöckner Pentaplast Schweiz AG has received sufficient security.



### III. Retention of Ownership

1. All deliveries remain the property of Klöckner Pentaplast Schweiz AG (reserved goods) until the purchase price has been paid in full.
2. The buyer has to designate the delivered goods separately and keep them separate from his property and/or deliveries by third parties until the payment is made in full. Until full payment the buyer is not allowed to combine, blend or process the delivered goods. In case that the buyer conducts a combining, blending or processing against the foregoing obligation the buyer shall transfer to Klöckner Pentaplast Schweiz AG the rights of ownership accruing to him in the new material or object which will also constitute reserved goods. Furthermore, the buyer shall transfer to Klöckner Pentaplast Schweiz AG all entitlement to compensation or any financial gain caused by such combining, blending or processing.
3. If any measures are necessary to protect the property of Klöckner Pentaplast Schweiz AG, the buyer shall be required to cooperate. In particular, he authorizes Klöckner Pentaplast Schweiz AG with conclusion of the contract to effect the registration or entry of the reservation of ownership in the public registers, books, etc. and to complete all the necessary formalities, at his own expense.
4. The buyer shall maintain the delivered goods for the duration of the retention of ownership at his own expense and insure them against theft, breakage, fire, water and other risks in favour of Klöckner Pentaplast Schweiz AG. In addition, he shall take all measures necessary to ensure that the retention of ownership by Klöckner Pentaplast Schweiz AG is neither impaired nor cancelled. If an application is made for insolvency proceedings to be opened against the assets of the buyer, Klöckner Pentaplast Schweiz AG is entitled to withdraw from the contract.
5. Klöckner Pentaplast Schweiz AG reserves the right to retain all movable objects which are in its possession with the buyer's intention until settlement of all its claims, provided that the possession and the claim derive from the business transaction.
6. Until full payment of the purchase price the buyer is not allowed to resell the goods. Such a resale may only be effected in the course of ordinary business provided that the buyer reserves the title to the goods in favour of Klöckner Pentaplast Schweiz AG opposite the third party pursuant to the conditions set out in these terms of delivery and payment. Until full payment the buyer is not authorized to make any other arrangements in respect of the goods. Resale within the meaning of this section also means the use of the goods for the performance of contracts for work and labour and contracts for work and materials.
7. All claims of the buyer arising out of a possible resale of the goods before full payment of the purchase price are hereby assigned to Klöckner Pentaplast Schweiz AG to secure its claims.
8. If goods delivered with retention of ownership are resold by the buyer together with other goods, the claim arising from such resale shall be assigned to Klöckner Pentaplast Schweiz AG in proportion of the invoiced value of the goods delivered with retention of ownership to the invoiced value of the other goods. In the event of a resale of goods in which Klöckner Pentaplast Schweiz AG has a co-ownership share pursuant to clause 2, the part of the claim equivalent to the co-ownership share of Klöckner Pentaplast Schweiz AG shall be assigned to it.
9. The buyer is entitled to collect all claims of Klöckner Pentaplast Schweiz AG arising from the resale on its behalf unless Klöckner Pentaplast Schweiz AG revokes the direct debit authorisation. At the request of Klöckner Pentaplast Schweiz AG, the buyer shall be required to inform his customers immediately of the assignment - unless Klöckner Pentaplast Schweiz AG does not do so itself - and to provide Klöckner Pentaplast Schweiz AG with all the necessary information and documentation to collect.



10. The buyer must notify Klöckner Pentaplast Schweiz AG immediately of any distraint or other impairment of the delivered goods by third parties.

## B. Delivery

### I. Delivery Periods and Delivery Dates

1. The delivery period commences as soon as the contract has been concluded, all official formalities such as import, export, transit and payment conditions have been completed, the payments to be made with the order have been effected and all securities have been put up and the necessary technical issues have been clarified.
2. If the buyer fails to meet his contractual obligations in time, including participatory and accessory obligations such as the opening of a letter of credit, making an advance payment or anything similar, Klöckner Pentaplast Schweiz AG shall be entitled to postpone its delivery periods and dates accordingly - notwithstanding its rights in respect of default payment by the buyer - to accommodate the needs of its own production process.
3. Compliance with the delivery periods and dates shall be determined by the time of the dispatch date ex-works. If the goods cannot be dispatched in time without fault of Klöckner Pentaplast Schweiz AG, the delivery periods and dates shall be deemed to have been complied with when notice of readiness for dispatch is given.
4. If Klöckner Pentaplast Schweiz AG is prevented from performing its obligations by the occurrence of unforeseen events affecting Klöckner Pentaplast Schweiz AG or its suppliers and which Klöckner Pentaplast Schweiz AG could not avert even by exercising reasonable care according to the circumstances of the case, the delivery periods shall be extended by the duration of such impairment plus an appropriate preparatory time. Such obstacles include war, terrorist attacks, cases of force majeure, internal unrest, natural events, accidents and other significant disturbances of operations and delays in the delivery of essential operating materials or raw materials. If delivery is prevented or becomes unreasonable for Klöckner Pentaplast Schweiz AG because of such obstacles, Klöckner Pentaplast Schweiz AG may withdraw from the agreement without being obligated to deliver replacements or pay any damages. The buyer has the same right if acceptance would not be reasonable for him because of the delay. Impairments for which Klöckner Pentaplast Schweiz AG is not responsible within the meaning of this paragraph also include strikes and rioting.
5. Any right of withdrawal accruing to the buyer or to Klöckner Pentaplast Schweiz AG under clause 4 of this paragraph generally applies to the unfulfilled part of the contract only. In case the partial deliveries made cannot be put to use by the buyer, he is entitled to withdraw from the entire contract.

### II. Dispatch and Passage of Risk

1. In the absence of specific instructions of the buyer, Klöckner Pentaplast Schweiz AG is entitled to determine the type of dispatch and the means of transport as well as the forwarding agent or carrier.
2. If the loading or the transportation of the goods is delayed due to reasons for which the buyer is responsible, Klöckner Pentaplast Schweiz AG is entitled to store the goods at its own discretion at the cost and risk of the buyer, to take all measures which Klöckner Pentaplast Schweiz AG considers suitable to maintain the goods and to invoice the goods as delivered. The statutory provisions with regard to the default in taking delivery remain unaffected.
3. Clause 2 applies accordingly in cases the parties have 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 ("request term"). After the expiry of the request term Klöckner Pentaplast Schweiz AG is also entitled - at its discretion - to deliver the ordered goods to the buyer.

4. To the customary extent, the goods are supplied with packaging. Packaging and transport costs shall be borne by the buyer.
5. Complaints concerning dispatch or transport must be made by the buyer immediately to the last carrier on receipt of the deliveries or of the freight documents. In case of damage to goods in transit the buyer shall immediately arrange for identification of the facts with the competent agency.
6. With conclusion of the contract the risk of an accidental loss is passed to the buyer.

### III. Mass, Weights, Qualities

1. Deviations from mass, weights, qualities, deficiencies, number of pieces, length, etc. are valid according to DIN or to normal practice.
2. 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.
3. Klöckner Pentaplast Schweiz AG reserves the right to over- or undersupply by up to 10% for customized production and up to 20% for quantities below 500 kg and also for partial deliveries.

### IV. Warranty

1. In the event of justified and prompt complaint by the buyer, Klöckner Pentaplast Schweiz AG will remedy the defect or take back the defective goods and deliver replacements in its sole discretion.
2. Only if Klöckner Pentaplast Schweiz AG fails to comply with these obligations according to sentence 1 the buyer shall have the statutory right of reduction. Further warranty claims will be hereby excluded as far as legally admissible. The buyer is personally responsible for the use and resale of the delivered goods; he must ensure the onward and retroactive traceability of all defective goods and commits himself to indemnify Klöckner Pentaplast Schweiz AG against all claims of third parties.
3. The buyer shall give Klöckner Pentaplast Schweiz AG immediate opportunity to assure itself that the defect exists, in particular and upon request he shall provide Klöckner Pentaplast Schweiz AG with the rejected goods or samples of them.
4. After the performance of an agreed acceptance, all complaints about defects and the exercising of any warranty claims which have been observed during this acceptance or could have been observed are excluded.
5. In the case of goods which are sold as declassified material, e.g. II-a material, the buyer has no warranty rights in respect of the indicated faults and any other faults which he could have typically anticipated.

### V. Technical Advice on Application

Unless expressly agreed otherwise in writing, all technical advice offered by Klöckner Pentaplast Schweiz AG relating to the technology is not binding. It does not release the buyer from the obligation to examine all goods delivered by Klöckner Pentaplast Schweiz AG in respect of their suitability, including the suitability for the intended further processing and the intended application.



#### C. General Limitation of Liability

Insofar as it is not otherwise regulated in these conditions, Klöckner Pentaplast Schweiz AG is only liable for damages as a result of the infringement of contractual or non-contractual obligations in cases of intentional or gross negligent infringement of substantial contractual obligations. The liability of Klöckner Pentaplast Schweiz AG shall be limited, as far as legally admissible, to damages which are customary and foreseeable in this type of contract, to the exclusion of consequential or indirect damages, loss of profits and suchlike.

#### D. Intellectual property

Developments by Klöckner Pentaplast Schweiz AG including developments in connection with the performance of jobbing coating orders are its intellectual property. They may not be passed on to third parties without the express written approval of Klöckner Pentaplast Schweiz AG. The buyer bears the sole responsibility for any breach of intellectual property rights of third parties.

All tools and imprinters remain the property of Klöckner Pentaplast Schweiz AG, 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 any designs and models of Klöckner Pentaplast Schweiz AG belong exclusively to Klöckner Pentaplast Schweiz AG.

#### E. Jurisdiction and applicable law

1. These terms of delivery and payment, together with all purchase contracts between Klöckner Pentaplast Schweiz AG and the buyer, shall be governed by Swiss law, excluding the provisions of the Convention of the United Nations dated 11.04.1980 on Contracts for the International Sale of Goods.
2. The place of performance for both parties is the respective seat of the supplier of Klöckner Pentaplast Schweiz AG.

**The exclusive place of jurisdiction for all disputes arising out of or in connection with these terms of delivery and payment is Liebefeld (Canton of Bern), Switzerland.**

Klöckner Pentaplast Schweiz AG is also entitled to sue the buyer at his general place of jurisdiction or at any other competent court.

Liebefeld, July 1, 2011