



klöckner pentaplast

**KLÖCKNER PENTAPLAST OF AMERICA, INC.
PURCHASING TERMS AND CONDITIONS**

1. **AGREEMENT.** Klöckner Pentaplast of America, Inc. (Purchaser) agrees to purchase and vendor identified on the Purchase Order (Vendor) agrees to sell the goods described on the Purchaser's Purchase Order (Purchase Order) (Goods), subject to these Terms and Conditions (the "Contract"). Purchaser's acceptance of Vendor's offer is expressly conditioned upon Vendor's assent to these Terms and Conditions. Vendor's performance or partial performance of this Contract shall be deemed assent to these Terms and Conditions.
2. **PRICE.** The price for the Goods shall not exceed the price indicated on the Purchase Order unless otherwise agreed in writing. All discount periods shall commence on the date of receipt by Purchaser of the Goods or invoice therefore, whichever is later.
3. **TAXES.** Except as otherwise provided on the Purchase Order, the price includes all applicable federal, state and local taxes.
4. **TRANSPORTATION COSTS.** Transportation costs will be paid as indicated on the Purchase Order. If Purchaser is to pay transportation costs, such costs will be prepaid by Vendor and added to Vendor's invoice. Unless otherwise agreed in writing, the price includes all charges for packaging.
5. **CHANGES.** Purchaser may, at any time, by written order, make changes in the quantity or in drawings and specifications, require additional work or direct the suspension or omission of work or Goods covered by this Purchase Order. If such changes cause an increase or decrease in the amount payable by Purchaser to Vendor or in the time required for performance, an equitable adjustment shall be made and this Purchase Order shall be modified accordingly by appropriate change order.
6. **DELIVERY; TIME.** The Purchaser's production schedules are based upon Vendor's agreement that the Goods will be delivered on the date(s) specified on the Purchase Order. Time is therefore of the essence with respect to Vendor's performance of this Purchase Order. If deliveries are not made at the time agreed upon, Purchaser reserves the right to cancel this Purchase Order, to charge Vendor warehousing and handling charges for early delivery or to purchase the Goods elsewhere and to hold Vendor accountable for any increase in price or additional cost. Unless otherwise specified, delivery will be F.O.B. Purchaser's plant.
7. **INSPECTION.** Goods are subject to inspection and approval by Purchaser or Purchaser's customer at the ultimate destination. Title to and risk of loss for the Goods shall pass only upon inspection and approval by Purchaser at the ultimate destination. Rejected Goods shall be returned by Purchaser to Vendor at Vendor's expense. Upon return of rejected Goods, Vendor shall issue Purchaser a credit (or refund if previously paid) for the price thereof.
8. **WARRANTY.** Vendor warrants the Goods will conform to the applicable specifications, drawings, brochures, samples or other descriptions and will be fit and sufficient for the purposes intended. Vendor warrants the Goods will be merchantable, of good quality and workmanship, and free from defect for a period of one year from date of

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final acceptance by the Purchaser or longer if required by the Purchase Order or if related to a subsequently discovered latent defect. Vendor shall be liable to Purchaser and Purchaser's customer and their employees for all damages to person and property, including economic damage, resulting from any failure of Vendor's warranty or breach by Vendor of the terms hereof, whether consequential or inconsequential, direct or indirect, foreseen or unforeseen.

Vendor agrees that in the event of a failure of warranty caused by a latent defect not discovered by Purchaser within the one year period, the warranty period shall be extended to, and including, the date of discovery of such latent defect by Purchaser.

9. **PATENTS.** Vendor warrants the Goods and the sale or use thereof will not infringe any patent right and agrees to defend all suits or claims against Purchaser or those selling or using Purchaser's product which incorporates the Goods. Vendor agrees to pay all costs (including attorneys' fees), damages, fines and profits resulting from or arising out of any such suit or claim and to pay all royalties and license fees required for the continued use and sale of the Goods.

10. **INDEMNIFICATION.** Vendor shall indemnify and hold Purchaser and its employees, agents and representatives harmless with respect to all liability, loss or damage as a result of all claims, judgments, statutory or regulatory compliance, demands, fines, penalties, costs or expenses asserted against Purchaser by all third parties as a result of or arising out of the use, consumption, storage, handling, modification or purchase of the Goods and based on claims that the Goods are non-conforming, defective, unsafe or harmful. This indemnity shall apply whether such liability is caused by, or arises out of, the negligence of Vendor, or its officers, directors, agents, employees or otherwise. Vendor shall defend Purchaser against any and all claims brought or actions filed against Purchaser with respect to the subject of the indemnity agreement contained herein and Vendor shall further indemnify Purchaser and its employees, agents and representatives with respect to all costs incurred by them in defending against any such claims or actions, including attorneys' fees and costs, employee downtime, witness fees and all other expenses of litigation or arbitration.

11. **DEFAULT BY VENDOR.** Upon the happening of any one or more of the following events, Purchaser shall have the right to cancel and terminate this Contract without cost or liability: (a) Vendor's insolvency or inability to meet obligations as they become due; (b) filing of involuntary or voluntary petition in bankruptcy by or against Vendor; (c) appointment of a receiver for Vendor by any court of competent jurisdiction; (d) breach by Vendor of a material provision of this Contract; or (e) transfer by Vendor of all or substantially all of its assets to a third party. Purchaser's remedy shall be in addition to, and not in lieu of, any other remedies provided in this Contract or at law.

12. **CONFIDENTIAL INFORMATION.** Vendor shall not, without first obtaining the written consent of Purchaser: (a) disclose to third parties the fact that Vendor has contracted to furnish Purchaser with the Goods; or (b) use or disclose to anyone any information which Purchaser discloses to Vendor regarding Purchaser's manufacturing processes, chemical formulations, customer information or other information which Purchaser considers proprietary. This confidentiality agreement shall not apply to information which is generally known in Purchaser's industry.

13. **DRAWINGS, ETC.** Purchaser is the sole owner of all drawings, specifications, samples, art work, tools, dies, etc. furnished by Purchaser to Vendor in connection with the Goods or developed specially by Vendor for Purchaser to produce the Goods. Vendor agrees to deliver such items to Vendor upon request and not to use such items to produce goods for third parties.

14. **LABOR ON PREMISES.** In the event performance of this Purchase Order requires Vendor to provide labor on Purchaser's premises (other than supervisory assistance), Vendor shall:

(1) Carry Workmen's Compensation Insurance and Public Liability Insurance with Bodily Injury and Property Damage limits acceptable to the Purchaser and furnish insurance certificates showing this coverage.

(2) Pay all Federal and State Taxes such as Social Security, Unemployment Insurance, and other taxes which may be required.

(3) Hire labor that will work in harmony with the other workers on the project.

(5) Accept full responsibility for compliance with State and Federal Wage and Hour Laws as well as OSHA and Equal Opportunity regulations.

15. **EQUIPMENT PURCHASE.** In the event the subject of this Purchase Order is equipment or machinery, Vendor and Purchaser agree the Klöckner Pentaplast of America, Inc. Terms and Conditions for Equipment Purchases shall apply to this transaction, are incorporated herein by reference and are available upon request from Purchaser's Purchasing Department. In such event, the term "Goods" shall be deemed to include such equipment or machinery. In the event of a conflict between the terms of this Contract and those of the Terms and Conditions for Equipment Purchases, the latter will prevail.

16. **CONSTRUCTION SERVICES.** In the event the subject of this Purchase Order is construction materials and services, Vendor and Purchaser agree the Klöckner Pentaplast of America, Inc. Construction Contract forms (AIA Document A-101, AIA Document A-201, Supplementary Conditions - All Construction Contracts and Secrecy Agreement) shall apply to this transaction, are incorporated herein by reference and are available upon request from Purchaser's Purchasing Department. In such event, the term "Goods" shall be deemed to include such construction materials and services. In the event of a conflict between the terms of this Contract and those of the Construction Contract forms, the terms of the latter will prevail.

17. **EQUAL OPPORTUNITY.** The Equal Opportunity clause in Section 202 of Executive Order 11246 is hereby incorporated by reference.

18. **ASSIGNMENT.** Vendor may not assign or delegate its responsibilities under this Contract without the express written consent of Purchaser.

19. **LIMITATION OF ACTIONS.** Any cause of action against Vendor arising out of this Purchase Order, by reason of any sale hereunder, or by reason of any federal or state statutory provision relating thereto, shall be commenced within four years from the date such cause of action arises. For purposes hereof, a cause of action arising out of or relating to a latent defect shall arise when such latent defect is discovered by Purchaser.

20. **CHOICE OF LAW, FORUM, SERVICE OF PROCESS AND ELECTRONIC EVIDENCE.** This Contract shall be deemed to have been entered into in the County of Louisa, Commonwealth of Virginia. All questions concerning the validity, interpretation or performance of any of its terms or provisions or of any rights or obligations of the parties hereto, shall be resolved exclusively in the appropriate state or federal court with jurisdiction in the County of Louisa, Virginia, in accordance with the laws of the State of Virginia, excluding its conflict of law rules, and Vendor expressly agrees to submit to the jurisdiction of state and federal courts in Louisa County, Virginia, and waives all objections to jurisdiction and venue.

In any legal proceeding relating to this Contract, the parties waive personal service and agree that in such case personal service and notice of proceedings may be made by registered or certified mail directed to either party at its address set forth on the Purchase Order or to any later address known to the other, and service shall be deemed complete upon mailing. In such case, the party to whom service is directed shall file pleadings in response within thirty (30) days after the mailing of the papers instituting such proceeding. If the party so served fails to answer or respond within thirty (30) days of mailing, it shall be deemed to be in default. The parties shall also have the right to effect personal service in any manner allowed by law.

VENDOR AGREES THAT ALL TRANSACTION DOCUMENTS MAY BE RETAINED AND USED BY PURCHASER EXCLUSIVELY IN AN ELECTRONIC FORMAT. SUCH TRANSACTION DOCUMENTS INCLUDE, BUT ARE NOT LIMITED TO, THESE TERMS, THE PURCHASE ORDER, NOTICES, DELIVERY ACKNOWLEDGMENTS AND INVOICES. VENDOR AGREES THAT ALL TRANSACTION DOCUMENTS RETAINED AND USED IN AN ELECTRONIC FORMAT SHALL BE ADMISSIBLE INTO EVIDENCE IN A COURT OF LAW OR ARBITRATION PROCEEDING TO THE SAME EXTENT AS THE ORIGINAL, NON-ELECTRONIC VERSION OF SUCH TRANSACTION DOCUMENTS WOULD BE ADMISSIBLE. VENDOR SEPARATELY CONSENTS TO TRANSACT BUSINESS BY ELECTRONIC MEANS.

21. **ENTIRE AGREEMENT, MODIFICATION AND WAIVER.** These Terms and Conditions and the terms of the Purchase Order constitute the entire contract of sale and purchase of the Goods and Purchaser shall not be liable for, or bound in any manner by any representations, guarantees, commitments, sales order terms and conditions, course of dealings or usage of trade, except as specifically provided herein. No modification of this Contract, no waiver of any provision or right to demand performance hereunder, and no waiver of the requirements of this sentence shall be of any force or effect unless in writing and signed by the authorized agent of the party claimed to be bound thereby, and no such modification or waiver shall result from the acknowledgment or acceptance of Seller's sales order or other forms containing conditions different from those herein. A waiver of any right, obligation or default shall not be construed as a waiver of any subsequent right, obligation or default.

22. **SEVERABILITY.** Should any of the provisions of these Terms and Conditions, or portions thereof, be found to be invalid by any court of competent jurisdiction, the remainder of these Terms and Conditions shall nonetheless remain in full force and effect.

23. **CLAUSE PARAMOUNT.** In the event of any conflict between the terms of this Contract and the terms of Vendor's sales order form, the terms of this Contract and these Terms and Conditions shall prevail despite such conflict, and notwithstanding any provision to the contrary regarding additional terms and acceptance or confirmation contained in the Uniform Commercial Code as adopted by any State.