



**KLÖCKNER PENTAPLAST OF AMERICA, INC.**

**SALES TERMS AND CONDITIONS**

**(FIVE PAGES)**

1. **EFFECT.** Klöckner-Pentaplast of America, Inc. (Seller) agrees to sell and customer (Buyer) agrees to buy the goods described on Seller's Order Confirmation, subject to these terms and conditions. Seller's acceptance of Buyer's offer or Purchase Order is expressly conditioned upon Buyer's assent to these terms and conditions. Upon issuance of an Order Confirmation by Seller, the terms thereof and these terms and conditions, which are incorporated by reference into the Order Confirmation, are binding upon Seller and Buyer and constitute the contract between the parties.
2. **PAYMENT TERMS.** Net amount of invoice is payable in full within thirty (30) days of date of invoice unless otherwise stated on the Order Confirmation. Buyer represents to Seller that Buyer is solvent. In the event Buyer becomes insolvent before delivery, Buyer will notify Seller. Failure to so notify shall constitute a reaffirmation of Buyer's solvency at time of delivery. If in Seller's opinion the financial condition of Buyer at any time does not justify continuance of production or shipment on the terms of payment specified, Seller may require full or partial payment in advance. Seller reserves a purchase money security interest in all goods sold on credit and the proceeds thereof. Buyer authorizes Seller to sign and file all financing statements necessary to perfect this security interest in Buyer's name as debtor and Buyer does hereby irrevocably appoint Seller as its attorney-in-fact for this purpose. In the event Buyer plans to change its name, Buyer shall notify Seller of such new name at least ten (10) days prior to the change to enable Seller to file an updated financing statement. The security interest shall be released by Seller when payment in full is received. If any payment is not made on time, Seller, in addition to its other legal rights, shall be entitled to interest on the unpaid balance at the rate of 18% per annum or at the maximum rate allowed by law if less, and to recover from Buyer all collection costs, including reasonable attorney's fees.
3. **VARIATIONS.** Unless otherwise specified, Seller may deliver and Buyer shall accept up to 10% more or less than the contract quantity. Where goods are sold on an actual weight basis, mill weights shall be conclusive. Goods are subject to Seller's standard manufacturing tolerances for variations.
4. **TAXES.** The amount of the present or future sales, revenue, excise, or other taxes applicable to the goods may be added to the purchase price and shall be paid by the Buyer, or in lieu thereof the Buyer shall provide the Seller with a tax exemption certificate acceptable to the taxing authorities.
5. **INSURANCE.** The contract amount does not include cargo insurance and Seller has no obligation to provide cargo insurance.
6. **TRANSPORTATION COSTS.** Unless otherwise specified, Buyer shall pay freight charges.
7. **CHANGES.** Seller has the right to change the price, freight allowance, or terms of payment specified hereunder at any time, provided Seller has given Buyer at least fifteen (15) days written notice of any such

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change. Buyer's failure to object in writing prior to the effective date of such revision shall be considered acceptance thereof. If Buyer should serve Seller with such notice prior to such date, Seller may either continue to supply Buyer at the then existing price, freight allowance and terms of payment, or cancel this order or any remaining part thereof upon written notice to Buyer. If Seller desires to revise the price, freight allowance or terms of payment pursuant to this paragraph, but is restricted to any extent against so doing by reason of any law, decree, order or regulation of any government, Seller shall have the right to cancel this order upon written notice to Buyer.

8. DELIVERY. Unless otherwise specified, shipment will be made F.O.B. Seller's plant. Shipments are made at the Buyer's risk. Shipment will be contracted by Seller on behalf of Buyer with charges for shipment added to Buyer's invoices unless otherwise specified on the Order Confirmation. Unless otherwise specified, Seller shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale and payment shall become due therefore in accordance with Paragraph 2, Payment Terms.

If shipment is specified to be by Buyer's vehicle, pick-up shall be made by Buyer within three (3) days after Buyer has been notified that the goods are ready for pick-up. Seller shall have the right to assess storage charges and to invoice Buyer for the goods if Buyer fails to pick up the goods within this period.

Approximate shipping date shown on the Order Confirmation shall be extended if shipment is delayed due to temporary raw material or labor shortage, production shutdown or delay, strike, fire, flood, governmental action or any cause beyond the control of the Seller.

9. CLAIMS. (a) SHORTAGES. All claims for shortages for goods short-shipped by Seller must be made to Seller in writing within ten (10) days after arrival. All claims for shortages for goods lost in transit must be filed with the carrier and noted on the bill of lading. Failure to follow the foregoing procedures shall constitute a waiver of any claim and of any rights of rejection or to revoke acceptance.

(b) DAMAGED AND DEFECTIVE GOODS. The Buyer shall inspect the goods immediately upon arrival. All claims for goods damaged in transit shall be filed with the carrier and noted on the bill of lading. All claims that the goods do not conform with the terms of the Order Confirmation (whether due to damage at Seller's plant, defects or otherwise) must be made to Seller in writing within ten (10) days after arrival. Such written notice shall state the full particulars in support of Buyer's claim. If the Buyer shall fail to give notice within the ten (10) day period, the goods shall be deemed to conform with the terms of the Order Confirmation, and the Buyer shall be bound to accept and pay for the goods in accordance with the terms of the Order Confirmation. The Buyer expressly waives any rights of rejection or to revoke acceptance after such ten (10) day period.

In the event that a timely and bona fide claim is made with respect to goods which do not conform to the Order Confirmation, and in the event Buyer establishes to Seller's reasonable satisfaction that the goods were produced by Seller and not another manufacturer, then Seller will either replace the goods upon return of such goods, give the Buyer an allowance or adjust the matter. **This shall be Buyer's exclusive remedy with respect to non-conforming goods. Under no circumstances shall the Seller be obligated for consequential or other damages, losses or expenses in connection with or by reason of the use or inability to use goods purchased for any purpose.**

In case of a dispute as to whether the goods conform to the Order Confirmation, Seller or Buyer must designate a mutually acceptable independent testing company and/or surveyor to make an examination and the findings shall be conclusive and binding on both parties. The expenses of the independent testing company

and/or surveyor shall be borne by the Seller with respect to each item found not to conform to the Order Confirmation and by the Buyer with respect to each item found to conform to the Order Confirmation.

10. SAMPLES. Orders made based upon samples must specifically describe the properties of the sample that are essential for use and/or performance of the goods. Any sample is for illustrative purposes only and shall not be deemed to create a warranty that the goods shall conform to the sample.

11. WARRANTIES, DISCLAIMERS AND INDEMNITY. Seller warrants that the goods conform to Seller's product specifications on the Seller's website or otherwise as specified in the Order Confirmation. Subject to these terms and conditions, Seller will replace goods which do not conform, give Buyer an allowance or adjust the matter as set forth under Paragraph 9, Claims.

**SELLER MAKES NO WARRANTY BEYOND THE WRITTEN DESCRIPTION OF THE GOODS ON THE ORDER CONFIRMATION, AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT ASSUME ANY RESPONSIBILITY FOR COMPLIANCE WITH FEDERAL, STATE OR LOCAL LAWS AND REGULATIONS OR SANITATION CODES. SELLER DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER DUE TO OR ARISING OUT OF BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTIES (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE) AND/OR SELLER'S NEGLIGENCE, AND SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY BREACH OR DEFAULT OF ANY KIND OR NEGLIGENCE SHALL BE LIMITED TO THAT SPECIFIED IN THESE TERMS AND CONDITIONS. BUYER EXPRESSLY ASSUMES ALL RISK OF PATENT INFRINGEMENT BY REASON OF ITS USE OF THE GOODS IN COMBINATION WITH OTHER GOODS, OR IN OPERATION OF ANY PROCESS.**

**BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS WITH RESPECT TO ALL LIABILITY, LOSS OR DAMAGE SELLER MAY SUFFER AS A RESULT OF ALL CLAIMS, JUDGMENTS, STATUTORY OR REGULATORY COMPLIANCE, DEMANDS, FINES, PENALTIES, COSTS OR EXPENSES ASSERTED AGAINST SELLER BY BUYER AND BUYER'S EMPLOYEES AND AGENTS AND BY ALL THIRD PARTIES AS A RESULT OF OR ARISING OUT OF THE USE, CONSUMPTION, STORAGE, HANDLING, MODIFICATION, SALE OR RESALE OF THE GOODS AFTER DELIVERY TO BUYER AND OF ANY PRODUCTS WHICH ARE PACKAGED USING THE GOODS, INCLUDING RECALLS OF BUYER'S PRODUCTS. THIS INDEMNITY SHALL APPLY WHETHER SUCH LIABILITY IS CAUSED BY, OR ARISES OUT OF, THE NEGLIGENCE OF SELLER OR ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES OR OTHERWISE. BUYER SHALL DEFEND SELLER AGAINST ANY AND ALL CLAIMS BROUGHT OR ACTIONS FILED AGAINST SELLER WITH RESPECT TO THE SUBJECT OF THE INDEMNITY CONTAINED HEREIN AND BUYER SHALL FURTHER INDEMNIFY SELLER WITH RESPECT TO ALL COSTS INCURRED BY SELLER IN DEFENDING AGAINST ANY SUCH CLAIMS OR ACTIONS, INCLUDING ATTORNEY'S FEES AND LEGAL COSTS, WAGES AND FRINGE BENEFITS FOR THE TIME SPENT BY EMPLOYEES WORKING ON THE DISPUTE, EXPERT WITNESS FEES AND COSTS AND ALL OTHER EXPENSES OF LITIGATION, ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION.**

12. SELLER'S REMEDIES. In the event the Buyer fails to perform its obligations, Seller, at its option, may cancel the contract and recover from Buyer its damages, including its expenses, and the difference between the contract price and the lesser of the Seller's cost or the market price at the point of delivery, or Seller may dispose of the goods publicly or privately for Buyer's account and apply the net proceeds, after deducting expenses of disposition, against the purchase price. The Buyer shall remain liable for any deficiency. Seller's expenses shall include reasonable attorney's fees and legal costs, wages and fringe benefits for the time spent by employees in

enforcement proceedings, expert witness fees and costs, and other costs of enforcing its rights. Seller's remedies contained herein are not exclusive.

13. BUYER'S REMEDIES. Except as otherwise provided herein, failure of the Seller to perform its obligations before delivery shall entitle Buyer to cancel the contract. Buyer's remedies for shortages and non-conforming, damaged and defective goods are set forth in Paragraph 9. Limitations on Buyer's remedies are set forth in Paragraph 11. Seller shall not be liable for any consequential or special damages. The remedies available to the Buyer as set forth herein are exclusive remedies, and all other remedies are hereby expressly waived by the Buyer.

14. GOVERNING LAW, LEGAL PROCEEDINGS AND SERVICE OF PROCESS. This contract shall be deemed to have been entered into in the County of Louisa, State of Virginia, United States of America. All questions concerning the validity, interpretation or performance of any of its terms or provisions of the contract or of any rights or obligations of the parties, shall be resolved in the District or Circuit Court for the County of Louisa or in the U.S. District Court for the Western District of Virginia, Charlottesville Division, in accordance with the laws of the State of Virginia, and Buyer consents to such jurisdiction and venue and waives all objection thereto.

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 Order Confirmation 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.

15. LIMITATION OF ACTIONS. Any action against the Seller arising out of the Order Confirmation, or by reason of any sale hereunder, or by reason of any federal or state statutory provision relating thereto, shall be commenced within one (1) year from the date such cause of action arises, or shall be barred notwithstanding any statutory period of limitations to the contrary.

16. ENTIRE AGREEMENT, MODIFICATION AND WAIVER. The Order Confirmation and these Sales Terms and Conditions constitute the entire contract of sale and purchase of the goods and Seller shall not be liable for, or bound in any manner by, any representations, guarantees, commitments, course of prior 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 modification or waiver shall result from the acknowledgment or acceptance of Buyer's purchase order 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.

17. 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.

18. TRANSACTION DOCUMENTS/ELECTRONIC FORMAT. **SELLER AND BUYER AGREE THAT ALL TRANSACTION DOCUMENTS MAY BE RETAINED AND USED BY SELLER EXCLUSIVELY IN AN ELECTRONIC FORMAT. SUCH TRANSACTION DOCUMENTS INCLUDE, BUT ARE NOT LIMITED TO, SELLER'S ORDER CONFIRMATIONS, THESE SALES TERMS AND CONDITIONS, SHIPMENT**

**NOTIFICATIONS, DELIVERY DOCUMENTS AND INVOICES. SELLER AND BUYER AGREE 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.**

19. CLAUSE PARAMOUNT. In the event of any conflict between the terms of this contract and the terms of Buyer's purchase order or a letter of credit, the terms of this contract and these Sales Terms and Conditions shall prevail despite such conflict, notwithstanding any provision to the contrary regarding additional terms and acceptance or confirmation contained in the Virginia Commercial Code, or otherwise.

*Rev. September 2011*