

# General terms and conditions of sales

## McAirloid's Vliesstoffe GmbH & Co KG (Dated 01.01.2009)

You can view these general terms of sales at any time by visiting our website <http://www.mcairlaids.com/web/conditions/> also in the English language. We will send you the English version per post if requested. Please send us a message.

### **I. General Conditions**

1. Our general terms and conditions of sales are valid for all contracts, deliveries and performances exclusively. Modifications are valid for individual cases only and require our written consent. Our General Terms and Conditions of Sales are also valid even by an executed delivery to the customer under the knowledge of divergent terms of the customer. Our General Terms and Conditions of Sales are also valid for any future business transactions with the customer.
2. Our General Terms and Conditions of Sales are only valid for companies according to sec. 310 subs. 1 BGB. (German Civil Code)

### **II. Quotations and Acceptance of Order**

1. Our quotations are subject to change unless otherwise stipulated in the acceptance of order.
2. Our delivery contract is generated through an acceptance of order on our behalf or through execution of delivery.

### **III. Prices, Terms of Payment, Exclusion of Set-off and Retention, Penalty for arrears**

1. Unless stipulated to the contrary through the acceptance of order the prices indicated are to be understood as being ex works or ex warehouse exclusive of transportation / shipment charges, customs duties, taxes and fees These will be additionally invoiced accordingly when indicated.
2. We reserve the right to correct our prices accordingly should cost reductions or cost increases occur following conclusion of contract, especially due to tariff agreements or subject to changes of material prices; in particular in respect of changes of the prices for raw materials. This will be substantiated by us at the customer's request.
3. The prices indicated are exclusive the statutory purchase taxes which will be separately declared according to the legal amount at the time of issuing of invoice. The customer is Debtor for possible turnover taxes on imports.
4. Payments made per bill of exchange will not be accepted.
5. Any deduction of discounts require our specific written agreement unless stipulated to the contrary in the acceptance of order
6. The purchase prices are to be understood as net prices (without deduction) and payable 30 days following date of invoice unless stipulated to the contrary in the acceptance of order. The legal regulations will become valid as a result of any default of payment.
7. The customer does not have any rights of set-off unless counterclaims have been legally ascertained, are undisputable or with our acceptance. Furthermore, he may only exercise his rights of retention insofar as his counterclaims are based on the same contractual relationship.
8. In the case of the customer coming into arrears of payments of due invoices either in its entirety or partially or we acquire the knowledge as such of any circumstances which give us reason to believe that our claims on the customer could in any way be at risk, we withhold the right to make any further deliveries dependant on advance payment or indemnification of the purchasing price. In such a case all outstanding invoices will become due for payment immediately and we additionally acquire the right to prohibit the customer of the selling of already delivered commodities, to redeem these or to secure them. The customer is obligated to inform us of our commodities to be found in his authority of possession and to allow us to inspect his warehouse at any time. Redemption of commodities on our behalf does not interpret a rescission of contract. We are authorised to discretionary sale of commodities following redemption. The proceeds arising from sales less reasonable expenses for

redemption will be deducted from the customer's accounts payable.

#### **IV. Delivery, Transfer of Risk**

1. Delivery and transportation will be affected ex works or ex warehouse at the customer's own risk as also in the case of carriage free delivery. The risk will be transferred to the customer at the time of loading or at the placing of goods at the customer's disposal should collection be agreed upon.

2. We are legitimated to partial delivery.

3. In the case of us warranting a date of delivery or a delivery deadline and becoming in default of delivery, our customer must submit in writing an appropriate respite of delivery while threatening refusal of acceptance after the expiration of such.

The customer is authorised, following an ineffective expiry of the respite of delivery deadline, to rescission of contract in reference to the quantity not been announced as ready for delivery by expiry of the deadline.

#### **V. Reclamations, Warranty, Liability**

1. Circumstances for any rights of warranty on the customer's behalf is his obeying of an orderly performance of inspections and deficiency obligations pursuant to sec. 377 HGB (German Commercial Code). In accordance to this, the commodities are to be inspected for deficiencies directly after handover. Indications of deficiencies must be notified immediately. The commodities are to be seen as approved should the customer infringe against his inspection and deficiency obligations

2. We supply our customers with Airlaid-Composite-Products. These are manufactured from natural fluff pulp fibres. The absorbency of these fibres can vary. The fluff pulp fibres can be exposed to differing climatic and thermal conditions during the production process. This can lead to a tolerance of up to +/- 5 percent in reference to bulk and weight. Such tolerances are customary and reasonable. The customer cannot object to such tolerances.

3. In the case of reclamations, we are entitled to select either from rectification of deficiencies or of compensation delivery. Should we not be in the position to fulfil our obligation of rectification or compensation within the fixed period of time or the rectification of deficiencies or compensation delivery is unsuccessful, the customer then has the right to rescission of contract or to demand a reduction of the purchase price.

4. In the case of the customer choosing rescission from contract following an unsuccessful supplementary performance, he is not entitled to any claims of compensation for deficiencies.

5. In the case of the customer choosing compensation following an unsuccessful supplementary performance the commodity will remain in his hands if this is to be seen as reasonable. The compensation for deficiencies is restricted to the difference between the purchasing price and the value of the defect commodity. This does not apply by a fraudulent breach of contract on our behalf.

6. Compensations on the terms of deficiencies are barred inasmuch as they can be put down to the minor negligence of an irrelevant contractual obligation. It is however to be noted that our warranty for minor negligence of irrelevant contractual obligations is limited to typical average damages which are foreseeable according to the nature of the commodity at the time of conclusion of contract. This limitation of liability is also valid for minor negligence of contractual obligations through our sales representatives or vicarious agents. This is not valid for injury to life, body or health of others attributable to us.

7. The limitation period for claims is 1 year as of transfer of risk.

8. Deliveries of special commodities are excluded from any kind of warranty. They are exempt from rectification of deficiencies, additional delivery, withdrawal, reduction or compensation.

9. The limitation of liability pursuant to clause 6 also covers all claims of compensation for damages beyond that of the liability for deficiencies irrespective the legal nature of the claim. This is in particular valid for claims of compensation for damages due to infringement of pre-contractual obligations, for other breach of

duties or for fraudulent claims of compensation for property damages.

**10.** This is also valid with regards to liabilities of compensation for bodily damages of our employees, labourers, colleagues, representatives and vicarious agents insofar as an exemption or limitation from claims for compensation on our behalf is given.

## **VI. Retention of Title**

**1.** We reserve the rights of retention for commodities delivered from us until payment has been made in full for any and all claims and entitlements we have against our customer which lie in connection with the business relationship, including emerging future claims. This is also valid in the case that individual or all claims have been included in a current account which has been balanced and acknowledged.

**2.** The customer is only then entitled to sell-on the commodities subject to retention of title within his orderly course of business against assignment of claims accrued either from his purchaser or other third persons arising out of the re-sale. The customer assigns to us, herewith and with immediate effect, the accrued claims for sold-on commodities to the full amount. The customer is authorised to collect the assigned claims for us until revocation of authorisation. Our authorisation of self collection remains thereof unaffected; however, we obligate ourselves not to undertake any self-collection of accrued claims in so far as our customer satisfies his payment and other obligations. We reserve the right of announcement on the part of the customer that he notifies us of any assigned accrued claims and respective debtors, reveals all details relevant for collection, submits the related documentation hereof and advises his debtors of such assignment of claims.

**3.** Possible processing or manufacturing of commodities subject to retention of title will be effected for us through the customer devoid of any arising obligations on our behalf. In the case of processing, bonding, mixing or blending of commodities subject to retention of title with goods of the customer, we shall be entitled to co-ownership of the new property inasmuch as the invoiced value of commodities subject to retention of title relates to the other goods at the time of processing, bonding, mixing or blending. In the case of the customer acquiring sole ownership of the new property, we are agreeable with the customer that he entitles us to co-ownership of the new property in relation to the value of the processed, bonded, mixed or blended commodities subject to retention of title and to hold these entitlements in his safe custody on our behalf at his own expense.

**4.** The customer must inform us immediately and in writing of distraint or other seizures of the commodities subject to retention of title by third parties.

**5.** The customer is committed to adequately insure the commodities subject to retention of title against damages caused by fire, water and theft.

**6.** We engage with the customer, the entitlement to release securities at his request and at our own choice insofar as the feasible value of the securities exceeds the amount of the assigned claims by a total of more than 10 percent.

## **VII. Returns**

Returns will only then be accepted following written advice, with an appending delivery note and when the goods are orderly and correctly packed and are to be found in an undamaged condition.

## **VIII. Place of Fulfilment, Place of Jurisdiction, Governing Law**

**1.** The governing law upon the contractual relationship with the customer shall be the law of Germany exclusively. The execution of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is also excluded even if the customer has his domicile in a foreign country.

**2.** The place of fulfilment is the company's registered office, insofar as not otherwise determined in the confirmation of order.

**3.** Place of jurisdiction for all and any dispute which may occur in reference to this contract is 48143 Muenster, Federal Republic of Germany. However we behold the right to also take legal action at the customer's domicile.

**IX. Final Provision**

Should any individual provisions of this General Terms and Conditions for Sales be wholly or partially invalid or should a loophole become apparent, the remaining provisions or parts thereof will not be affected. exclusively