

# Airlite Plastics Co.

## General Terms and Conditions of Sale

**1. BUYER OBLIGATED TO TEST FOOD PACKAGING PRODUCTS:** Buyer acknowledges that Airlite Plastics Co. (“Airlite”) does not perform testing for compliance with any of the standards Buyer may require including, but not limited to, suitability of food packaging products (collectively “Food Packaging Products”) for any specific applications such as “hot-fill”, microwave or dishwasher use. Buyer shall perform its own testing to verify that the Food Packaging Products are suitable for Buyer’s application. All Food Packaging Products are sold on the condition that Buyer shall examine and test samples prior to the initial purchase to determine whether the Food Packaging Products: (i) meet Buyer’s requirements; (ii) comply with all compatibility and use requirements of Buyer, including, but not limited to, compatibility of the Food Packaging Products with filled (hot or cold) or finished product; and (iii) are compatible with any other manufacturer’s products with which the Food Packaging Products are intended to fit or be used. All testing and evaluation required of Buyer by this Section 1 shall be Buyer’s sole and continuing responsibility.

Once Airlite has made samples available, Buyer’s purchase order for Food Packaging Products acts as confirmation and representation that such examination, evaluation and testing has been performed by Buyer.

**2. WARRANTIES AND DISCLAIMERS, FOOD PACKAGING PRODUCTS:** Airlite warrants that it will convey good title to the Food Packaging Products and that the Food Packaging Products sold hereunder, at the time of shipment or delivery, shall be suitable for food contact service under the Federal Food, Drug and Cosmetic Act, as amended, and all applicable regulations thereunder.

Airlite’s Food Packaging Products are warranted to be free from defects in material and workmanship at the time sold by Airlite. Airlite’s sole obligation for alleged breach of warranty, breach of contract, strict liability, product liability, recall liability, negligence or other cause or theory is limited only to the replacement of the Food Packaging Product. **IN NO EVENT SHALL BUYER BE ENTITLED TO RECOVER FROM AIRLITE ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR EXPENSES**, including but not limited to, loss of anticipated profits, loss of use damages, property damage or recall campaign expenditures whether voluntarily initiated or otherwise (even if Buyer has been advised of the possibility or likelihood of such claim or damage), for any breach of this limited warranty, or for any claim that the Food Packaging Products delivered hereunder were defective or nonconforming. Buyer accepts the Food Packaging Products solely on the basis of the warranties hereinabove expressed.

**EXCEPT AS STATED ABOVE, NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, EXTEND BEYOND THE EXPRESS WARRANTIES REFERENCED ABOVE. AIRLITE EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT ANY FOOD PACKAGING PRODUCTS SOLD HEREUNDER ARE OF MERCHANTABILITY QUALITY OR FIT FOR A PARTICULAR PURPOSE. AIRLITE DISCLAIMS ANY OTHER WARRANTY BASED ON STATUTE, REGULATORY PROVISION, COMMON LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, OR NOT EXPRESSLY PROVIDED FOR HEREIN.**

**THIS LIMITED WARRANTY IS IMMEDIATELY AND AUTOMATICALLY INVALIDATED AND NULL AND VOID FOR ANY FOOD PACKAGING PRODUCTS OTHERWISE COVERED BY THE AFOREMENTIONED WARRANTY IF THE FOOD PACKAGING PRODUCTS ARE AT ANY TIME, WITHOUT LIMITATION: (A) EXPOSED TO ELEMENTS OR TEMPERATURES BEYOND THE COMMON SERVICE TEMPERATURES INTENDED FOR SUCH FOOD PACKAGING PRODUCTS AND/OR ANY RAW MATERIALS CONTAINED THEREIN; (B) USED FOR APPLICATIONS NOT INTENDED FOR SUCH FOOD PACKAGING PRODUCTS, OR ANY REUSE SECONDARY TO THE INTENDED PURPOSE OR; (C) ALTERED OR TAMPERED WITH BY ANYONE.**

**3. WARRANTIES AND DISCLAIMERS, OTHER PRODUCTS:**

Airlite products manufactured by Airlite except Food Packaging Products (collectively “Other Products”) are warranted to be free from defects, materials and workmanship which cause the Other Products not to perform as set forth in the product manual existing at the time of the sale of the Other Product. This warranty extends only to original purchasers of the Other Products and applies only if the Other Products are used, handled, stored, transported, and installed in accordance with applicable Airlite installation manuals, other applicable instructions or guidelines published by Airlite, and applicable building codes. This warranty is effective only if Airlite receives written notice within 30 days after the first discovery of a defect but in no event later than 365 days after the date of shipment of the product.

Airlite’s liability, and the warranty-claimant’s sole and exclusive remedy for alleged defects in the materials or manufacturing of Other Products, shall be limited to the replacement of an equivalent amount of allegedly defective Other Products, or a refund of the invoice price charged and paid for the allegedly defective Other Products, as Airlite may in its sole discretion elect. **IN NO EVENT SHALL AIRLITE BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSSES, COSTS, OR EXPENSES OF ANY KIND** (including, by way of example, but not limited to, loss of profits, loss of value to structures, labor to replace allegedly defective product or to reinstall conforming product, injury to credit, reputation or goodwill, and exemplary or other similar damages) directly or indirectly resulting from any alleged breach of warranty contained herein. No other person or entity has any authority to bind or assume on behalf of Airlite any other liability, affirmation, undertaking, representation or warranty in connection with the sale or use of Other Products except as stated herein. No further warranty is expressed or implied that is not specifically set forth herein.

**THIS WARRANTY EXPRESSLY EXCLUDES, DISCLAIMS, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, WRITTEN OR ORAL. EXCEPT AS EXPRESSLY SET FORTH HEREIN, AIRLITE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF WORKMANLIKE QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. AIRLITE DISCLAIMS ANY OTHER WARRANTY BASED ON STATUTE, REGULATORY PROVISION, COMMON LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR NOT EXPRESSLY PROVIDED HEREIN.**

Airlite makes no warranty, express or implied (including any warranty as to the workmanlike quality, merchantability or fitness for a particular purpose) with respect to any product, goods or systems not manufactured by Airlite, which warranties are hereby expressly disclaimed to the fullest extent allowed by applicable law. Buyer shall be limited to the warranties (if any) of the respective manufacturers of the products or of the goods or systems sold.

The foregoing is the complete and exclusive statement of the terms of warranty of Airlite for its Other Products. In the event the remedies set forth herein should be found to have failed their essential purposes or are otherwise found to be unenforceable, in no event shall Airlite's liability, nor shall a claimant's damages, exceed the actual purchase price paid for the Other Product.

4. **INDEMNIFICATION:** Buyer shall hold harmless, defend and indemnify Airlite from and against any expenses, claims or causes of action (including Airlite's attorney's fees and expenses) as a result of (i) death, bodily injury, personal injury or property damages arising out of Buyer's marketing, advertising, sale, distribution or use of the Food Packaging Products or Other Products (including any claims or causes of action based on items for which or with which the Food Packaging Products and Other Products are used) except to the extent caused solely by Airlite's gross negligence; (ii) Buyer's violation of any applicable law or standard in the marketing, advertising, labeling (or improper or inadequate labeling), sale, distribution or use of the Food Packaging Products or Other Products or items with which or for which the products are used; (iii) any alleged patent, trademark, trade dress, copy right, trade secret or other intellectual property infringement based upon Buyer's specifications; and (iv) any failure of Buyer to perform as required by Section 1 herein.

5. **EXTENSION OF CREDIT/FINANCE CHARGES:** In consideration of, and in order to allow Airlite to establish a line of credit, Buyer shall pay Airlite all charges to the account in accordance with the terms of sale. Terms of sales have been established as **NET 30 DAYS**, unless different terms are agreed to in writing. Interest of 1.5% per month or the highest applicable and lawful rate on such unpaid balance, whichever is lower, on invoices 30 days past due will be charged on all past due accounts.

6. **FREIGHT POLICY:** All Shipments are F.O.B. Airlite's Shipping Plant. Title passes to the Buyer at Airlite's loading dock, unless different terms are agreed to in writing.

7. **COMPLETE SHIPMENT:** Airlite reserves the right to under/over ship by up to 5%, of the quantity ordered. Any claims for shipment discrepancies must be made within one week of receipt. Contact your Airlite Customer Service representative or local distributor for further details or to report a claim.

8. **CANCELLED ORDERS:** Non-custom orders may be cancelled within 72 hours of placement. After 72 hours, orders may only be cancelled with Airlite's writing permission. Cancellation of orders will be subject to a cancellation fee.

Cancellation of custom orders will be subject to a cancellation fee. The cancellation fee will be determined by the amount of custom raw materials purchased, as well as tooling and production work done at the time of the cancellation. Custom orders that have been completed are non-cancellable and non-returnable.

9. **RETURNS:** Orders are subject to acceptance or rejection for any reason. No Food Packaging Products or Other Products may be returned without written authorization from Airlite's Customer Service Representative. No Food Packaging Products or Other Products may be returned after 30 days after date of receipt. All authorized returns are subject to a 20% restocking fee plus return freight.

10. **COLLECTION:** If, for any reason, collection proceedings or legal action are deemed necessary by Airlite to collect any portion of the amount that is in default, or in any litigation involving any sale of Food Packaging Products or Other Products hereunder or these terms and conditions, venue and jurisdiction shall be exclusively in the state and federal courts within Douglas County, Nebraska. Buyer consents to the exclusive jurisdiction and venue of such courts and waives any objection to such jurisdiction and venue. All sales of products hereunder and these terms and conditions shall be governed by the laws of the State of Nebraska, without giving effect to conflicts of law principles. Buyer shall pay all bank fees and collection costs including reasonable attorney fees to the extent permitted by applicable law whether or not suit is filed.

11. **NO INSOLVENCY:** Buyer agrees that each issuance of a purchase order by Buyer constitutes a representation that it is not insolvent and is not presently a debtor in any insolvency or bankruptcy proceeding. In the event of insolvency, Airlite's invoice shall constitute a demand for reclamation of the Food Packaging Products and Other Products identified on the invoice under UCC §2-702 and United States Bankruptcy Code §546(c). Buyer: (i) agrees to properly notify Airlite in case of insolvency; (ii) waives any defenses to Airlite's right of reclamation to the products identified in Airlite's invoice; and (iii) shall promptly return such products to Airlite.

12. **SECURITY INTEREST:** Airlite shall have a continuing security interest or lien on all Food Packaging Products and Other Products purchased on Buyer's account until paid in full.

13. **WAIVER:** The failure of Airlite to insist on any occasion upon the performance of any term or condition of Airlite's quotations, acknowledgements, or this document, shall not be construed as a waiver of such term or condition on any other occasion. In addition, any such failure will not be construed as a waiver of any other term or condition of the mentioned contracts and this document by Airlite.

14. **FORCE-MAJEURE:** Neither party shall bear responsibility for the complete and partial non-performance of any of its obligations - except for the failure to pay any sum which has become due - if the non-performance results from such circumstances as flood, fire, earthquake, and other acts of God, as well as war, military operations, blockade, acts or actions of state authorities or any other circumstances beyond the party's control. In this case, the time stipulated for the performance of an obligation under contract is extended correspondingly for the period of time of action of these circumstances and their consequences.

15. **SEVERABILITY:** If any provision included in the terms and conditions set forth in this document shall be deemed invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity of any other terms or conditions of this document.

16. **ACCEPTANCE:** Airlite's acceptance of Buyer's purchase order is expressly conditioned upon and limited to Buyer's acceptance of the General Terms and Conditions of Sale contained in this document ("Terms") which are in lieu of and notwithstanding any additional, different or conflicting terms which may be contained in Buyer's purchase order or other documents or other communications (written or oral) pertaining to Buyer's order of Food Packaging Products or Other Products from Airlite. Buyer's assent to the Terms shall be conclusively presumed from Buyer's acceptance of any or all of the Food Packaging Products or Other Products or from payment by Buyer for any or all of the Food Packaging Products or Other Products. Any prior negotiations and agreements between Buyer and Airlite are hereby merged into this document. These Terms may not be modified, superseded or otherwise altered, except by a written instrument signed by an officer of Airlite. Failure of Airlite to object to any terms or conditions which may be contained in any Buyer document or form or other communication shall not be construed as a waiver of these terms or as an acceptance by Airlite of any other terms and conditions. Airlite expressly and specifically rejects any and all different or conflicting terms and conditions in any request for quotation, purchase order, purchase acknowledgement or any other documents or communications (written or oral) received from Buyer relating to the purchase and sale of the Food Packaging Products or Other Products. All handwritten changes (additions and/or deletions) to this document by Buyer are null and void and of no legal force or effect.