



STANDARD TERMS AND CONDITIONS OF SALE

GENERAL. All sales by Assmann Corporation of America ("Seller") are expressly conditioned upon these terms and conditions (the "Terms"). These Terms may in some instances differ with those affixed to Buyer's purchase order or other documents. If so, any additional conditions, requirements or terms conflicting with these Terms will not apply and are expressly rejected unless specifically set forth in a separate written agreement between the parties. Acceptance of Buyer's order is expressly conditioned upon Buyer's acceptance of or assent to these Terms, which shall be established by a written acknowledgment, by implication, or by acceptance or payment for products ordered hereunder (the "Goods"). Seller's forbearance or failure to enforce any of the Terms stated herein or failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of these Terms. Any changes in these Terms must specifically be agreed to in writing and signed by an officer of Seller before becoming binding.

SALES. All prices are F.O.B. Seller's plant unless otherwise specifically set forth on the invoice transmitted herewith. Prices stated are subject to change without notice. Stenographic and clerical errors and omissions in the invoice are subject to correction. All invoices become net due and payable thirty days from date of invoice unless stated otherwise. Buyer agrees to pay for the products according to Seller's payment terms. Buyer agrees to pay a delinquency charge of 1 and 1/2% per month (or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate) on the outstanding balance not paid when due, from the date such balances were due until payment with respect thereof is made in full. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. In the event that Seller incurs attorney fees in its efforts to collect monies owed by Buyer, Buyer agrees to pay all expenses of collection, including but not limited to, all attorney fees, incurred in the collection of this

account. Seller may establish a credit limit and future credit sales may be refused when the account is delinquent. If, in Seller's opinion, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified, Seller reserves the right to decline to make shipment or may otherwise require full or partial payment in advance. All orders and shipments shall at all times be subject to the approval of the Seller's Sales Department.

SHIPPING/DELIVERY. Seller shall select the carrier for any and all deliveries, unless the parties mutually agree otherwise. All transportation charges are for the account of the Buyer. All shipments will be billed at the Seller's prices in effect at the time of delivery and shall not exceed the maximum prices lawfully established under any applicable law or governmental regulation in effect at time of shipment. Title to the Goods and risk of loss pass to Buyer upon delivery of the Goods by Seller to the carrier or delivery service. Buyer assumes all risk of loss in shipping and all liability for loss or damage, whether direct, indirect, consequential or otherwise, due to delays once the Goods have been delivered to the carrier. Buyer agrees to purchase any and all insurance it deems necessary to indemnify it against any loss in shipping. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation. Seller is not liable for delays due to force majeure, including, but not limited to, weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Seller. Delivery is also subject to federal and state laws and regulations. Delivery dates are approximate and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller does not guarantee to ship within the time provided on the invoice, but uses its best efforts

to do so and shall not be liable for any damage caused by delay in delivery.

ACCEPTANCE. Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim of shortages or defects in the Goods within forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. Upon acceptance of the Goods, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any defect or nonconformance in the Goods after such acceptance shall be corrected under, and subject to, the conditions set forth in the Assmann Limited Warranty. Goods may not be returned without Seller's prior written return authorization. Once a return authorization number is issued by Seller, Buyer may return the Goods transportation and insurance prepaid in accordance with instructions issued by Seller. Failure to follow Seller's return procedures may result in lost Goods, delay, additional service, restocking charges, warranty denial, or refusal of a shipment. The return authorization number must appear on the shipping label along with all paperwork associated with the return. Seller has the right to reject Goods returned without the correct return authorization number clearly marked on the outside of the shipping container. Granting a return authorization number does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without a fee.

SECURITY INTEREST. Buyer hereby grants Seller a purchase money security interest in the Goods until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest. No Goods furnished by the Seller shall become a fixture by reason of being attached to real estate.

WARRANTY. Seller provides the Assmann Limited Warranty ("Limited Warranty") on the Goods and this Limited Warranty, which Seller incorporates herein by reference, constitutes the exclusive remedies available to Buyer from Seller. The Limited Warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. **THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR A**

PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. All other conditions or warranties express or implied, statutory or otherwise (including without limitation as to quality, performance, merchantability or fitness or suitability for purpose) are excluded to the fullest extent permitted by law. Upon expiration of the applicable Limited Warranty period, any liability of Seller in connection with such exclusive remedies shall terminate, and Buyer shall have 30 days after the warranty period to give written notice of any defects, failures, malfunctions, or other performance or non-performance issue that appeared during the warranty period. No statement or recommendation made or assistance given by the Seller or its representatives to the Buyer or its representatives, in connection with the sale or use of the Goods shall constitute a waiver by the Seller of any of the Terms or any provision of the Limited Warranty or otherwise affect the Seller's liability, as herein defined.

LIMITATION OF LIABILITY. Seller's liability (under any theory of law or equity, including, but not limited to, breach of contract or warranty, negligence, tort and/or strict liability) for any loss or damage arising out of, connected with, or resulting from the transaction, or from Seller's performance or breach thereof, or from the design, manufacture, sale, resale, installation, repair, operation or use of the Goods furnished herein, SHALL BE LIMITED TO REPAIRING OR REPLACING (AT SELLER'S OPTION) GOODS FOUND BY SELLER TO BE NON-CONFORMING, OR AT SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF THE NON-CONFORMING GOODS PURSUANT TO THE TERMS OF SELLER'S LIMITED WARRANTY. Seller shall not be liable for Buyer's or Buyer's customer's mishandling or misuse of the Goods. At Seller's request, Buyer will send, at Buyer's sole expense, any allegedly defective Goods to Seller's plant.

IN NO EVENT, SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT OR PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE

PRODUCTS, FACILITIES OR SERVICES, DOWN TIME COSTS, OR CLAIMS OF BUYER'S CUSTOMER FOR SUCH DAMAGE, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY ITS OWN NEGLIGENCE OR FAULT.

SELLER'S TOTAL AND AGGREGATE LIABILITY FOR ANY CLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THESE TERMS SHALL BE LIMITED TO THE PURCHASE PRICE PAID TO SELLER UNDER BUYER'S ORDER AND BUYER AGREES TO INDEMNIFY SELLER FOR ANY EXCESS AMOUNTS. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION(S) HEREOF, SUCH PROVISION(S) WILL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION.

TAXES. Any sales, excise, personal property or similar taxes, export charges, fees or other levies, taxes or surcharges now or hereafter imposed in connection with the production, sale, delivery, use or proceeds of the Goods (except for taxes on Seller's net income) shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by Seller, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.

SEVERABILITY. If any provision of this agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

ASSIGNMENT. These Terms shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of Seller.

GOVERNING LAW. These Terms and the purchase of the Goods shall be construed in accordance with and governed by the laws of the State of Indiana with regard to its conflict of law provisions.

ENTIRE AGREEMENT. The Terms set forth herein, along with the invoice and Limited Warranty

incorporated which are herein by reference, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. There are no understandings or agreements between Buyer and Seller relative hereto which are not fully expressed herein, and no change made herein shall be valid unless it is made in writing and signed by both parties.

DISPUTES. Buyer and Seller shall endeavor in good faith to negotiate an amicable resolution to any dispute or claim arising from or relating to the order, sale, manufacture and/or delivery of the Goods. In the event such negotiations are not successful, Buyer and Seller agree that any and all remaining disputes shall be submitted to binding arbitration for resolution, pursuant to the Federal Arbitration Act (9 U.S.C. § 1, *et seq.*) and in accordance with the then-current Expedited Commercial Arbitration Rules under the American Arbitration Association ("AAA"), except to the extent those rules conflict with the Terms. If such a conflict arises, the Terms shall prevail. Each party shall bear equally the costs of the arbitration.

The venue of any arbitration will be in Fort Wayne, Indiana unless otherwise agreed to by the parties in writing. The arbitration will be conducted by a single arbitrator, selected pursuant to the rules of the AAA, though the arbitrator does not necessarily need to be retained or appointed through AAA. Any arbitration award must state the arbitrator's material findings of fact and conclusions of law. A party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending appointment of an arbitrator. A prevailing party in litigation to require arbitration or to obtain preliminary relief pending appointment of an arbitrator or in litigation to confirm or enforce an arbitration award will be entitled to recover its reasonable attorney's fees and costs. Any suit to require arbitration under this agreement, or to enforce judgment upon an arbitration award, shall be brought in the state courts of the State of Indiana.