

## **LIMITED WARRANTY**

**Stellar Materials Incorporated ("Stellar") extends the following limited warranty for Thermbond® Refractories and Phoscrete® Concretes ("products") only to its distributors, industrial commercial customers, and commercial customers who have had Stellar products installed by Stellar or installation agents approved by Stellar (each, a "User").**

### **1. LIMITED WARRANTY**

**Limited Warranty Period.** All products are manufactured to meet published physical properties within tolerances established by Stellar when the material is stored, mixed, placed, and cured according to Stellar's published installation guides, and Stellar warrants all products to be free from defects for a period consistent with the shelf life of the material as described from time to time in the published installation guides or until it is installed, whichever period shall expire first.

**Limited Warranty Remedies.** If, prior to expiration of the foregoing applicable limited warranty period, any of such products shall be proved to Stellar's satisfaction to be defective or nonconforming, Stellar will repair or replace such defective product, F.O.B. Stellar's plant or other destination designated by Stellar, or will refund or provide User with a credit in the amount of the purchase price paid therefor by User, at Stellar's sole option. User's exclusive remedy and Stellar's sole obligation under this warranty shall be limited to such repair or replacement, F.O.B. Stellar's plant or other destination designated by Stellar, or refund or credit by Stellar, and shall be conditioned upon Stellar's receiving written notice of any defect within a reasonable period of time (but in no event more than sixty (60) days) after it was discovered or by reasonable care should have been discovered. **In no event shall Stellar's liability for such defective or nonconforming products exceed the purchase price paid by User therefor.**

**Exclusions.** This warranty (i) does not cover shipping expenses to and from Stellar's factory or other destination designated by Stellar for replacement of defective product or any tax, duty, custom, inspection or testing fee, or any other charge of any nature related thereto, nor does it cover the costs of removing defective product or reinstalling, or testing repaired or replaced product or finishing the reinstallation thereof; (ii) does not apply to, and shall be void with respect to, product not installed in accordance with installation instructions or requirements; product altered by a party other than Stellar or Stellar's authorized service agents; product which has been rendered defective or nonconforming as a result of mixture with any defective or nonconforming materials of any party other than Stellar; product that was subjected to abuse, negligence, misuse, misapplication, accident, damages by circumstances beyond Stellar's control, improper installation (if by others than Stellar), operation, maintenance or storage, or any use or service other than normal use or service; and (iii) does not apply to product not manufactured by or for Stellar. With respect to product not manufactured by Stellar, Stellar's warranty obligations shall in all respects conform and be limited to the warranty actually extended to Stellar by its suppliers, but in no event shall Stellar's obligations be greater than those provided under Stellar's limited warranty set forth herein.

**THE FOREGOING LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF STELLAR (OTHER THAN AN OFFICER OF STELLAR) IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS LIMITED WARRANTY OR TO MAKE ANY GUARANTEE, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS CONTRARY TO THE FOREGOING.** Any description of the product, whether in writing or made orally by Stellar or Stellar's agents, or specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials which may have been used in connection with any promotional materials or otherwise used in selling products to, or creating purchase orders for, User or for any agent acting on behalf of User (other than Stellar) are for the sole purpose of identifying the product and shall not be construed as an express warranty or to modify this limited warranty in any manner whatsoever. Any suggestions by Stellar or Stellar's agents regarding use, application or suitability of the product shall not be construed as an express warranty or to modify this limited warranty in any manner unless confirmed in writing by an authorized officer of Stellar.

### **2. LIMITATIONS OF LIABILITY; CONSEQUENTIAL DAMAGES**

**Improper Use Disclaimer.** Product sold by Stellar is not intended for use (i) in connection with any nuclear facility or activity, (ii) in connection with any material not specifically approved in the Installation Guide, or (iii) in any manner or use otherwise contrary to the Installation Guide. If so used, Stellar disclaims all liability for any nuclear damage, other damage, injury or contamination, and User shall indemnify and hold Stellar, and its officers, agents, employees, successors, assigns and customers, harmless from and against any and all damages, liability, claims,

losses or expenses of whatever form or nature (including attorneys' fees, court costs, out-of-pocket expenses and other costs of defending any action) that they or any of them may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, by reason of such use.

**Consequential Damage Disclaimer.** Stellar's liability with respect to product proved to its satisfaction to be defective or nonconforming within the limited warranty period, and for which no other exclusions or limitations set forth in this limited warranty are applicable, shall be limited to replacement or refund as provided in this limited warranty, and in no event shall Stellar's liability exceed the purchase price of the product involved. Stellar shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence) or other theories of law, with respect to product sold or services rendered by Stellar, or any undertakings, acts or omissions relating thereto. Without limiting the generality of the foregoing, Stellar specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of product, cost of capital, cost of substitute products, facilities or services, construction or other delays, downtime, shutdown, or slowdown costs, or for any other types of economic loss, and for claims of User's customers, agents, principals, partners, or other affiliated parties or affected third parties (all of the foregoing, "Affected Parties") for any such damages.

**EVEN IF THE REPLACEMENT REMEDY SHALL BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE UNDER SECTION 2-719 OF THE UNIFORM COMMERCIAL CODE, STELLAR SHALL HAVE NO LIABILITY TO USER FOR CONSEQUENTIAL DAMAGES, SUCH AS LOST PROFITS, LOST REVENUE, DAMAGE TO OTHER PRODUCT, OR LIABILITY OR INJURY TO USER, ANY AFFECTED PARTY, OR ANY OTHER THIRD PARTY. STELLAR SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.**

### **3. INDEMNIFICATION BY USER**

---

By use of products manufactured by or for Stellar, User agrees to indemnify, hold harmless, and defend Stellar, and Stellar's officers, agents, employees, successors, assigns and customers, from and against any and all damages, liability, claims, losses and expenses of whatever form or nature (including attorneys' fees, court costs, out-of-pocket expenses and other costs of defending any action) arising out of or resulting in any way from claims by User, any Affected Party, or any other third parties against Stellar alleging a breach of contract or warranty by Stellar, to the extent that such damages, liability, claims, losses and expenses may be payable by Stellar to User pursuant to and as limited by Stellar's limited warranty obligations as contained in this limited warranty, so as to effectively limit Stellar's obligations to Affected Parties or other third parties to those set forth in this limited warranty.

### **4. PATENT INDEMNIFICATION**

---

Stellar will, at its own expense, defend or settle any suits that may be instituted against User for alleged infringement by the product of any United States patent, provided that (a) such alleged infringements consist of the use of the product for any of the purposes for which such product was sold, (b) User shall have made all payments for such product then due hereunder, (c) User shall give Stellar immediate notice in writing of any such suit and transmit to Stellar immediately upon receipt all processes and papers served upon User, and (d) User shall permit Stellar through its counsel, either in the name of User or in the name of Stellar, to defend such suit(s) and give all needed information, assistance and authority to enable Stellar to do so.

In case of a final award of damages in any such suit, Stellar will pay such award but will not be responsible for any compromise or settlement made without its written consent. In case the product itself is in such suit held to infringe any valid patent issued in the United States and its use enjoined, or in the event of a settlement or compromise approved by Stellar that shall preclude future use of the product sold to User by Stellar, Stellar shall, at its own expense and at its sole option, either (a) procure rights to continue using such product, (b) modify the product to render it non-infringing, (c) replace the product with non-infringing product, or (d) refund the purchase price paid by User for the product after return of the product to Stellar. Notwithstanding the foregoing, Stellar shall not be held responsible for infringements of combination or process patents covering the use of product in combination with other goods or materials not furnished by Stellar.

The foregoing states the entire liability of Stellar for patent infringement, and **in no event shall Stellar be liable for consequential or incidental damages attributable to an infringement**, nor shall Stellar be liable for infringement based on the use of the product for a purpose other than that for which sold by Stellar. As to any product furnished by Stellar to User manufactured in accordance with designs proposed or furnished by User or any claim of contributory infringement resulting from the use or resale by User of product sold hereunder, User shall indemnify Stellar for any award made against Stellar or settlement by Stellar for any patent, trademark or copyright infringements, including attorneys' fees, court costs, out-of-pocket expenses and other costs of defending any action.