

TERMS AND CONDITIONS OF SALE  
SAMUEL ASSOCIATED TUBE GROUP - USA

1. General

Any written or oral order received from a customer (“Customer”) by Associated Tube Industries, Inc. (“Samuel”) for the supply of part, service, or products (the “Products”) is governed by the standard terms and conditions of sale outlined below (the “Terms”), as such may be amended by Samuel from time to time. Samuel rejects any terms and conditions inconsistent with these Terms and rejects any other terms proposed by Customer in accepting Samuel’s proposal or quotation. No agreement, oral or written, in any way claiming to modify these Terms will be binding on Samuel unless agreed to in writing by an authorized representative of Samuel.

2. Quotation

Any quotation given by Samuel to Customer shall not constitute an offer.

3. Acceptance of orders

Any order from Customer to Samuel for the supply of Products shall not be binding on Samuel until either accepted by Samuel in an order confirmation or fulfilled by delivery of the Product(s) identified in the order (an “Accepted Order”). Any sample provided by Samuel is not part of an Accepted Order.

4. Delivery

Any quoted delivery dates are estimate only. Samuel is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever. Samuel shall be under no liability for direct or consequential loss or damage to Customer arising from delay or postponement of delivery.

5. Incomplete accepted orders

Any portion of an Accepted Order which is not filled and shipped as a result of a lack of inventory or due to force majeure as described below, will nevertheless be retained as an Accepted Order and delivered as soon as possible; however, if Samuel notifies Customer that such portion cannot be delivered at a later date, the Accepted Order for that portion will be cancelled and Samuel will not incur any liability whatsoever to Customer as a result thereof.

6. Shipping

Customer's Accepted Order must contain complete shipping instructions. All fees, costs, duties and other charges connected with shipment, transportation, insurance and importation of the Products are the responsibility of Customer and if paid by Samuel, shall be reimbursed by Customer to Samuel.

#### 7. No cancellation

Accepted Orders cannot be cancelled or modified, in whole or in part, without Samuel's prior written consent. If Samuel agrees to alter or cancel an Accepted Order, Customer shall indemnify Samuel against any loss, damage and expense incurred by Samuel in relation to the cancellation or alteration of such order, including the cost of return freight, return shipping, items purchased from third parties for inclusion in the Products and all labor costs incurred by Samuel in the execution or part execution of the Products.

#### 8. Taxes

All prices are subject to all applicable sales and use taxes, excise taxes, customs, duties and tariffs and any other taxes, customs, duties and tariffs now or hereafter imposed and/or levied by any governmental authority with respect to the sale of the Product(s) ("Applicable Taxes"). Applicable Taxes will be added to the price Customer pays for the Products. Samuel's failure to charge or collect Applicable Taxes when due shall not relieve Customer of its obligation for payment.

#### 9. Payment terms and credit policy

##### a. Payment.

Customer shall pay the amounts due and owing to Samuel identified on each invoice in full and in accordance with the terms specified on each invoice.

##### b. Invoice Disputes.

Customer shall notify Samuel in writing of any dispute with any invoice (along with substantiating documentation) prior to the invoice due date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct. The parties shall seek to resolve all such disputes expeditiously and in good faith. Should any dispute arise with respect to any goods delivered by Samuel to Customer, Customer shall nevertheless pay all invoices covering goods not in dispute, without setoff, defense or counter-claim.

##### c. Late Payments.

On any invoice not paid when due, Customer shall pay a late charge from the due date to the date of actual payment at the lesser of the simple interest rate of 12% per annum

calculated monthly or the highest rate permissible under applicable law. Customer shall reimburse Samuel for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Samuel does not waive by the exercise of any rights hereunder), Samuel shall be entitled to suspend its performance if Customer fails to pay any amounts when due. Payments shall not be delayed for causes not solely attributable to the Samuel.

d. No Partial Payments.

Customer irrevocably agrees that it will not, without Samuel's prior written consent in each instance, tender any payments for less than the full amount of the invoices to which said payment applies ("Partial Payments"). Any Partial Payments tendered by or for the account of Customer shall not extinguish or otherwise affect any unpaid portion of the subject invoices, despite any notation on or accompanying said payment such as "in full payment," "in full satisfaction," or words of similar effect.

e. Right to Set Off.

Any payment received by Samuel from Customer may be applied by Samuel against any obligation owing by Customer to Samuel, regardless of any statement appearing on or referring to such payment, without discharging Customer's liability for any additional amounts owing by Customer to Samuel. The acceptance by Samuel of such payment shall not constitute a waiver of Samuel's right to pursue any remaining balance. With respect to any monetary obligations of Samuel to Customer, including without limitation, volume rebates and advertising rebates, Samuel may, at any time, setoff and appropriate and apply such amounts against any sums that are, or will become, owing, due or payable to Samuel by Customer under these Terms or any other agreement.

10. Acceptance of product(s)

Customer is responsible for promptly inspecting Product(s) delivered and notifying Samuel within five (5) calendar days following receipt of the Product(s) for which a claim is filed, of any non-conformance of the Product(s). If Customer fails to notify Samuel within five (5) calendar days following receipt of the Product(s), Customer shall be deemed to have accepted the Products. Customer acknowledges and agrees that any shipment of Products varying by up to 10% from the quantity and/or weight specified in the Accepted Order shall be deemed to have fulfilled the quantity and/or weight in the Accepted Order.

11. Title and risk

The risk of loss of, or damage to, the Product is assumed in accordance with the INCOTERM specified on Samuel's order confirmation. Notwithstanding the foregoing, any

Product described in an invoice or in an Accepted Order is and will remain the property of Samuel until they are paid for in full. The reference to an INCOTERM shall have the same meaning as that ascribed to it by the International Chamber of Commerce in its current edition of INCOTERMS.

## 12. Returns

Product(s) may not be returned for credit without Samuel's prior written approval. Samuel's approval can be withheld in its sole discretion or Samuel can impose terms and conditions for such approval, including but not limited to the imposition of restocking charges.

## 13. Warranty

Samuel warrants that the Products will be free from defects in material and workmanship and shall conform to the specifications set out in the Accepted Order for the duration of the specified Warranty Period. "Warranty Period" means for Products, a period of twelve (12) months from the date of delivery not to exceed eighteen (18) months from when Samuel notifies Customer that the Products are ready for delivery, whichever first occurs. must provide prompt written notice to Samuel of any alleged non-conformance within the Warranty Period and return any nonconforming Products at its expense. Samuel will, at its option, correct such nonconformity by suitable repair or replacement of Products. Customer shall assume all responsibility and expense for dismantling, removal, re-installation, freight, and technician travel costs in connection with the foregoing. If repair or replacement is not feasible, Samuel will, at its option, refund the full purchase price for such equipment, part or service, as Customer's sole and exclusive remedy. Repairs or replacement do not interrupt or prolong the term of the warranty. Third party components and equipment are sold subject to the respective manufacturer's conditions of sale, and Customer will receive the warranties given, provided they are transferable.

## 14. Warranty Limitations

THIS WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED.

SAMUEL MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCT(S) WITH ANY SAMPLE. THE WARRANTIES CONTAINED HEREIN SET FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFECT.

## 15. Force majeure

If Samuel's performance of any obligation is delayed due to unavailability of Product(s) or by reason of fire, strike, lock-out, labour trouble, war, epidemic, embargo, flood, delay in

transportation, lack of critical materials, lack or unavailability of trailers and/or railway cars, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond Samuel's commercially reasonable control (a "Force Majeure"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, Samuel shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, Samuel may elect to cancel the Accepted Order, without liability, if we believe that the Product(s) will not become available within a reasonable period of time as Samuel so determines. Samuel also reserves the right to apportion Product(s) among its customers in such manner as Samuel considers equitable, and such determination shall be conclusive and binding on Customer without liability to Samuel.

#### 16. Limitation of liability

Customer acknowledges and agrees that Samuel has no liability in contract, tort (including negligence or breach of statutory duty) by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill or for any liquidated, indirect, incidental, exemplary, enhanced, punitive, special or consequential loss or damage whatsoever. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SAMUEL'S LIABILITY UNDER ANY CIRCUMSTANCE AND FOR ANY REASON (SHALL, AT SAMUEL'S OPTION, BE TO REPLACE NONCONFORMING PRODUCT(S) OR REFUND THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH NONCONFORMING PRODUCTS AND UNDER NO CIRCUMSTANCE SHALL SAMUEL'S LIABILITY UNDER ANY CONTRACT AND THESE TERMS EXCEED THE TOTAL DOLLAR AMOUNT OF THE ACCEPT ORDER GIVING RISE TO THE LIABILITY.

#### 17. Collection charges

Customer shall pay all costs and expenses, including without limitation reasonable attorney's fees and administrative charges, Samuel incurs protect its rights arising out of Customer's failure to perform its obligations to Samuel, including without limitation any attempt to collect any amount Customer owes Samuel.

#### 18. Governing law

The transactions between Customer and Samuel shall be governed by the laws of Delaware, and Customer agrees to submit exclusively to the jurisdiction and venue of the courts of Delaware with respect to any dispute arising out of any transaction between Customer and Samuel; provided, that Samuel may, at its option, commence proceedings in any jurisdiction where Customer carries on business or owns any assets. CUSTOMER

AND SAMUEL KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.

19. No right of set-off

Each Accepted Order constitutes a separate and distinct contract when accepted by Samuel and Customer may not withhold payment of an invoice or offset same, in whole or in part, against sums Customer claims are due it by Samuel with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.

20. Rights are not exclusive

Samuel's rights hereunder are in addition to and not in lieu of any other rights and remedies available to Samuel at law or in equity.

21. Notices

All notices of claims or disputes given by either Customer or Samuel with respect to any communications, Accepted Order or these Terms shall be in writing and sent by (a) first class mail with a copy by certified mail, return receipt requested, postage pre-paid, or (b) overnight delivery service, charges prepaid, and addressed as follows: (i) if intended for Samuel, to its address at the location to which a an Accepted Order was placed, and (ii) if to Customer, the address last known to Samuel. Notice will be effective the first business day after notice is sent.

22. Miscellaneous

No waiver of any rights or remedies shall be binding on Samuel unless set forth in a written waiver signed by Samuel. Samuel does not give up any of its rights or remedies if it fails or delays in seeking a remedy or if Samuel accepts a payment while there is breach by Customer. Any such waiver, delay or failure by Samuel on one occasion shall not be deemed a waiver by Samuel of any future default by Customer or of any future right or remedy available to Customer. The Section, Paragraph and other headings in these Terms are for convenience of reference only, and shall not limit or otherwise affect the meaning of any provision contained in these Terms. The invalidity or enforceability of any provision in these Terms shall in no way affect the validity or enforceability of any other provision.