

## Limited Warranty

**5. LIMITED WARRANTY:** a) Subject to the limitations set forth in Section 6 below, Landmark warrants that Products sold by Landmark as “first choice goods” are manufactured in accordance with Landmark’s published technical standards. This limited warranty is valid only: (i) for a period of one hundred and eighty (180) days from the date of shipment of the Goods by Landmark, or (ii) for the period from the date of shipment of the Goods by Landmark until installation or attempted installation of the Goods, whichever is less. This limited warranty applies only to “first choice goods” sold by Landmark. ALL GOODS SOLD BY LANDMARK OTHER THAN “FIRST CHOICE PRODUCTS” ARE SOLD AS IS. THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY LANDMARK WITH RESPECT TO THE GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO LANDMARK, AND WHETHER OR NOT LANDMARK’S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY LANDMARK FOR BUYER’S (OR ANY SUBSEQUENT TRANSFEREE’S, AS DEFINED BELOW) USE OR PURPOSE.

b) OTHER THAN REPRESENTATIONS OR WARRANTIES MADE BY LANDMARK IN ITS LITERATURE AND/OR PACKAGING, NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE PRODUCTS MADE BY ANY PERSON OR ENTITY INCLUDING, BUT NOT LIMITED TO, INDEPENDENT DISTRIBUTORS AND SALES REPRESENTATIVES, SHALL BE BINDING UPON LANDMARK.

c) IF YOU ARE A CONSUMER, AND SHOULD ANY APPLICABLE LAW PROHIBIT THE DISCLAIMER OF IMPLIED WARRANTIES SET FORTH ABOVE, THEN ANY IMPLIED WARRANTIES FOUND TO EXIST WILL BE STRICTLY LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE.

d) Notwithstanding the foregoing, this limited warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Landmark’s), unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application. To the extent that Buyer and/or its agents have supplied specifications, information, representation of operating conditions, or other data to Landmark or Manufacturer in the selection or design of the Goods and the preparation of Landmark’s quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

e) Buyer must notify Landmark of any defects in the Products in writing, via certified mail to Landmark Ceramics, at 1427, N Main Street, Mt. Pleasant – TN, 38474, within thirty (30) days of Buyer’s receipt of the Goods. Failure to provide such notice within 30 days of receipt shall act as a complete bar to any claims against Landmark for any defect. Upon receiving Buyer’s notice of defect, Landmark shall, at its option, repair, correct or replace the Goods EX WORKS (which shall have the same meaning as in the Incoterms 2000 published by the International Chamber of Commerce), or refund the purchase price for that portion of the Products found by Landmark to be defective. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer. Notwithstanding the provisions contained in the preceding sentences of this paragraph, Buyer shall be deemed to have accepted the Products and absolutely and unconditionally waived its rights to claim for any defects: (i) upon installation or attempted installation of the Products, or (ii) if the Products are otherwise used or altered in any way. It is Buyer’s obligation to fully inspect the Goods prior to installation or attempted installation.

f) Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

g) This Section 5 also applies in the event that any entity or person (other than Buyer) buys, acquires or uses the Goods, including, but not limited to, any entity or person who obtains the Products from Buyer (any of them a “Subsequent Transferee”). Buyer hereby covenants and agrees to provide such Subsequent Transferee with written notice of the provisions set forth in Sections 5 and 6 of these Terms and Conditions of Sale, by providing each such Subsequent Transferee with a copy of these Terms and Conditions of Sale, or an online link thereto, at the time of sale from the Buyer to the Subsequent Transferee. Additionally, should a Subsequent Transferee again transfer or sell the Goods to another end user, the Subsequent Transferee shall be under the same obligation to provide notice of these Terms and Conditions of sale to the end user. Buyer, furthermore, covenants and agrees that it shall not make any representation or warranty whatsoever regarding the Products to any third party (either on behalf of Landmark or on its own account), other than the limited warranty of Landmark set forth in this Section 5. BUYER HEREBY COVENANTS AND AGREES THAT, SHOULD IT FAIL TO COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH, BUYER SHALL DEFEND, INDEMNIFY, AND HOLD LANDMARK, ITS OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, EXPENSE (INCLUDING REASONABLE ATTORNEYS’ FEES), OR CLAIMS FOR INJURY OR DAMAGES (INCLUDING, BUT NOT LIMITED TO GENERAL, CONSEQUENTIAL, INCIDENTAL AND PUNITIVE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH BUYER’S OR BUYER’S EMPLOYEES’, AGENTS’, REPRESENTATIVES’ AND/OR INDEPENDENT CONTRACTORS’ BREACH OF THESE TERMS AND CONDITIONS OF SALE. For clarity, this Section shall control and supersede any state law providing for any indemnification to Buyer by Landmark for any claims raised by a Subsequent Transferee where Buyer has failed to comply with this Section.1

**6. LIMITATION OF REMEDY AND LIABILITY:** a) THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE IN ACCORDANCE WITH SECTION 5 ABOVE.

b) BUYER, ANY SUBSEQUENT TRANSFEREE, AND ANY END USER OF THE GOODS AGREE THAT LANDMARK SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND, IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OTHER TORT, OR OTHERWISE), SHALL LANDMARK’S LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY LANDMARK GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY CLAIM BY BUYER, A SUBSEQUENT TRANSFEREE, OR AN END USER OF THE GOODS FOR INDEMNIFICATION OR ATTORNEYS’ FEES IN EXCESS OF THE PURCHASE PRICE BY BUYER, AND SHALL SUPERSEDE ANY STATE LAW TO THE CONTRARY.2 BUYER AND ANY SUBSEQUENT TRANSFEREE AGREES THAT IN NO EVENT SHALL LANDMARK’S OR MANUFACTURER’S LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term “consequential damages” shall include, but not be limited to, loss of anticipated profits, loss of business opportunity, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

c) It is expressly understood that any technical advice furnished by Landmark or Manufacturer with respect to the use of the Goods is given without charge, and Landmark and Manufacturer assume no obligation or liability whatsoever for the advice given, or results obtained, all such advice being given and accepted at Buyer’s own risk.