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## Terms and Conditions of Sale

**APPLICABILITY:** THESE TERMS AND CONDITIONS OF SALE INCLUDE THE FOLLOWING TERMS AND CONDITIONS, TOGETHER WITH ANY OTHER TERMS AND CONDITIONS SPECIFICALLY AGREED TO IN WRITING BY SELLER (ASTA INDUSTRIES, INC. D/B/A ASTA AMERICA BY JANUS INTERNATIONAL, COLLECTIVELY, "ASTA"), SHALL APPLY TO ALL SALES ORDERS ("Order(s)") FROM, AND ALL SALES OF GOODS, PRODUCTS, ACCESSORIES (THE "PRODUCTS") AND/OR INSTALLATION SERVICES, MORE PARTICULARLY DESCRIBED IN EXHIBIT A HEREUNDER (THE "SERVICES") WHEREVER LOCATED TO BUYER. ANY ACCEPTANCE OF ANY ORDER BY THE BUYER IS CONDITIONED UPON THESE TERMS/CONDITIONS. No salesperson is authorized to bind Asta to any promise or understanding not expressed herein. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products and/or Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

**PRICES:** All prices are subject to change without notice in the event of any changes in cost of materials or labor, specifications, quantities, delivery schedules, customs duties, other factors beyond Asta's control, or, in the event of delays caused by instructions of the Buyer, or failure of the Buyer to provide Asta adequate information. If color is not specified at time of quote, prices are quoted as Polar White. Prices and, in some cases, warranties vary by color. Door products are measured as "opening width" by "opening height", unless otherwise specified. Asta reserves the right to change contract and proposal prices due to changing steel market prices that are passed along by our steel suppliers.

**PAYMENT:** All invoices from Asta to Buyer are immediately due and payable in full, without discount, upon receipt, but in no event later than thirty (30) days following the invoice date. Any delinquent payments more than thirty (30) days past due from the date of invoice shall bear interest at the rate of 1.5% per month (18% per annum) or the highest permitted legal rate, whichever is less accruing daily. Asta shall be entitled to suspend manufacture of the Products and/or performance of the Services and/or delay making arrangements for shipment of finished products or period of performance in the event of late payment of a progress invoice. Payments shall be made by Buyer without any deduction or set-off. If any payments due from Buyer under any Agreement are collected by or through an attorney at law or collection agency, Buyer agrees to pay Asta for all costs of collection including, without limitation, reasonable attorneys' fees incurred by Asta.

In addition to the payment requirements set forth above, if the financial condition of Buyer is unsatisfactory to Asta in Asta's sole and absolute discretion, Asta may require full or partial payment in advance, or satisfactory security, in the form of a letter of credit or otherwise. Notwithstanding any other provision herein, in the event of bankruptcy, assignment for the benefit of creditors or a comparable event or insolvency of Buyer, Asta may immediately cancel any Order then outstanding and/or cause any Products, with respect to which either freight, delivery, shipping, or storage are being provided, to be returned to Asta wherein in either event ownership thereof shall automatically revert to Asta.

**GRANT OF SECURITY INTEREST:** Notwithstanding any other provision in these Terms and Conditions to the contrary, Buyer acknowledges and agrees that in the event Asta delivers the Products to Buyer prior to Buyer paying all amounts owed to Asta for the purchase price of the Products, Buyer grants to Asta a security interest in and to the Products to secure Buyer's payment of the full amount of the purchase price owed to Asta for the Products. Asta is hereby authorized by Buyer to file, at Buyer's expense, such financing statements and other documents in all public offices deemed necessary or appropriate by Asta to evidence Asta's security interest in the Products, without Buyer's signature and, if a signature is required by law, Buyer appoints Asta as Buyer's attorney-in-fact to execute such financing statements and other instruments, and Buyer further agrees, if necessary, to execute and deliver any statement or instrument requested by Asta for such purpose.

**SHIPMENT & DELIVERY:** Buyer is responsible for all delivery, shipping and transportation charges. Shipments are sent F.O.B. – Asta's warehouse. Buyer assumes all risk of loss at the time the Products leave Asta's warehouse for delivery to Buyer or once Buyer pays the entire purchase price for the Products, whichever is earliest. Notwithstanding the foregoing, in the event that Delivery of the Products is delayed by any act or omission of Buyer, then any Products held for the Buyer shall be at the risk and expense of the Buyer. Buyer shall pay Asta storage fees equal to five percent (5%) of the invoice value of the stored Products per month or part thereof. Buyer

shall dispose of the packing materials for Products at its own expense, and shall defend, indemnify and hold harmless Asta from any legal obligations in connection with such packing waste. Back Orders must be prepaid when less than a minimum freight shipment. Freight rates are subject to fuel surcharges at the time of shipping and invoicing.

**DAMAGE OR LOSS IN SHIPMENT:** Asta shall not be responsible for damage or loss in transit and the Buyer must make all claims directly to the carrier. Claims for shortages must be made in writing within ten (10) days after receipt of the shipment by the Buyer, and failure to give Asta written notice within that period shall be qualified acceptance of the Products and a waiver of all claims.

**SPECIAL ORDERS:** Buyer acknowledges and agrees that all Products which are considered "Special Orders" are specially designed and custom built by Asta, and that Asta takes immediate steps upon execution of shop drawings to design, order, and construct those items. Therefore, Buyer is responsible for, and hereby agrees to pay, the full purchase price for all "Special Orders" immediately upon signing Asta's written quotation(s) and/or proposal(s) for such items. In Asta's sole discretion, Asta may waive all or part of the purchase price if no substantial work on the "Special Order" has yet been completed.

**CANCELLATION; TERMINATION:** In addition to any remedies that may be provided under these Terms, Asta may terminate any Order for Products or Services with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under any Order for Products or Services, and such failure continues for seven (7) days thereafter; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

In the event that Asta cancels or terminates the Order(s) for Products or Services pursuant to the immediately preceding paragraph in this Section, Buyer agrees to pay Asta reasonable Termination Charges, including, but not limited to, any and all costs of manufactured materials or Products, freight, tax, and other direct costs and labor costs, whether or not billed for or shipped at the time of termination as well as any amounts due for Services provided, whether or not billed for at the time of termination, which are attributable to the subject Order(s), whether partial or complete, pertaining thereto. Buyer shall promptly pay Asta its reasonable Termination Charges and any other amounts due, upon submission of Asta's invoices thereof.

In the event that Buyer cancels or terminates the Order(s) for Products or Services for any reason whatsoever, Buyer agrees to pay Asta reasonable Termination Charges, including, but not limited to, any and all costs of manufactured materials or Products, freight, tax, and other direct costs and labor costs, whether or not billed for or shipped at the time of termination as well as any amounts due for Services provided, whether or not billed for at the time of termination, which are attributable to the subject Order(s), whether partial or complete, pertaining thereto. Buyer shall promptly pay Asta reasonable termination charges as a result of termination hereunder, and any other amounts due, upon submission of Asta's invoices thereof.

**PRODUCT RETURNS:** All Product returns must be accompanied by a completed Return Goods Authorization ("RGA") Form and RGA number, which will be provided by Asta to Buyer upon request for an eligible return. The RGA number must be printed on the outside of the package or it may be returned to Buyer. No credit will be authorized on the following claims: (1) returns out of warranty (expired or void); (2) returns without a proper RGA number; (3) "Special Orders," except as determined in Asta's sole discretion (discussed above); and (4) non-Asta items (i.e., products manufactured by other companies which are not approved by vendor). Credit or exchange will be issued to Buyer upon Asta's inspection and approval. All returns must be shipped freight prepaid. ASTA reserves the right of final approval on all returns.

**CLAIMS:** Buyer agrees to examine all Products and Services, invoices and statements promptly upon receipt from Asta. All Buyer claims regarding material deviations in the Products or Services from specifications contained in an Invoice or other written agreement between Buyer and Asta shall be brought by Buyer in writing within ten (10) days following Buyer's receipt of the Products or Services. No such claims brought by Buyer after such ten (10) day period shall be valid and such Products and Services shall be deemed accepted by Buyer in all respects.

**PRODUCT CHANGES:** Asta reserves the right to make changes or improvements to its Products or accessories without notice and without incurring any obligation to make similar changes or improvements to Products previously purchased by Buyer.

**DESIGN RIGHTS:** Buyer recognizes that the Products have been designed and built through expenditure of substantial time and money by Asta, and Buyer agrees that Asta shall retain all intellectual property rights, including but not limited to any trademarks, copyrights, and patents, in all Products that have been developed or manufactured by Asta. Buyer further agrees not to make drawings of the Products or any portion thereof, reverse-engineer the products, or permit others to do so, and will not duplicate or conspire in the duplication of the Products or manufacture goods that are substantially similar to the Products.

The purchase of Products shall not include any right to supply of technical information such as drawings or specifications. Proprietary information, including drawings, documents, technical data, reports, software, designs, inventions and other technical information supplied by Asta in connection herewith, whether or not constituting a trade secret (hereinafter collectively referred to as "Data"), shall remain Asta's sole property and shall be held in confidence by Buyer. Data shall not be reproduced, used or disclosed to others by Buyer

without Asta's prior written consent. Upon completion of Order(s), Buyer shall promptly return all Data to Asta together with all copies or reprints thereof then in Buyer's possession or control, and Buyer shall thereafter make no future use, either directly or indirectly, of any Data or any information derived therefrom without Asta's prior written consent. The foregoing shall in no way obligate Asta to provide or supply Data. Data shall not include information which is readily available to the public through no wrongful act of Buyer or others.

**LIMITED WARRANTY:** THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY ASTA IS THE "TWELVE MONTH LIMITED WARRANTY" THAT IS PROVIDED TO THE BUYER IN WRITING AT THE TIME OF PURCHASE (IF APPLICABLE). ASTA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY OTHER RIGHT, WHICH THE BUYER MAY HAVE, INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IS LIMITED IN DURATION BY THE DURATION OF THE TWELVE MONTH LIMITED WARRANTY. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. ANY UNAUTHORIZED MODIFICATIONS OR ALTERATIONS TO AN ASTA PRODUCT WILL VOID THE WARRANTY.

THESE TERMS AND CONDITIONS CONTAIN A SUMMARY OF THE RESPECTIVE ASTA WARRANTIES. THE FULL TERMS OF THE ASTA WARRANTIES CAN BE FOUND ON OUR WEBSITE AT [HTTPS://WWW.ASTADOOR.COM/](https://www.astadoor.com/). TO THE EXTENT OF ANY CONFLICT BETWEEN THE SUMMARY OF WARRANTY PROVISIONS SET FORTH HEREIN AND THE FULL WARRANTIES AS SHOWN ON OUR WEBSITE, THE PROVISIONS OF THE FULL WARRANTIES ON OUR WEBSITE CONTROL.

**LIMITATION OF LIABILITY:** IN NO EVENT SHALL ASTA, ITS AFFILIATES, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY SPECIAL, PROXIMATE, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING ANY LOSS OF PROFIT, GOODWILL, REVENUES, USE OF THE PRODUCTS OR SERVICES, BUSINESS OR BUSINESS INTERRUPTION OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF BUYER OR BUYER'S CUSTOMERS FOR DAMAGES FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS SUBJECT MATTER, OR ARISING OUT OF ANY ORDERS, PRODUCTS, OR SERVICES PROVIDED BY ASTA OR ANY BREACH OF THE SAME IN ANY MANNER, OR FOR ANY OTHER CLAIM, REGARDLESS OF WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF ASTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ASTA'S TOTAL LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TOTAL PURCHASE PRICE PAID BY BUYER TO ASTA FOR THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO SUCH POTENTIAL LIABILITY. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

If Buyer transfers title to, or leases Products sold hereunder to, or otherwise permits or suffers use by, any third party, Buyer shall obtain from such third party a provision affording Asta and its subcontractors/suppliers the protection of the preceding sentence. Any action against Asta must be brought within 18 months after cause of action accrues.

**INDEMNIFICATION:** Buyer agrees to indemnify, defend and hold harmless Asta from and against all claims, actions, causes of action, damages, losses, liabilities, costs and expenses, including reasonable attorney's fees, whether or not now or hereinafter known, suspected or claimed, by reason of any matter, cause or thing which Asta may incur, or which may be asserted against Asta by any person or entity relating or pertaining in any manner or way, directly or indirectly, to Buyer's performance of its obligations under this Agreement; provided, however, that this Indemnity shall not apply to any willful misconduct by Asta.

**EXCUSABLE DELAYS:** Asta shall not be liable for delays in delivery or failure to perform due directly or indirectly to causes beyond Asta's reasonable control including, but not limited to: acts of God; war; terrorism; civil commotion; riots; embargoes; government regulations, orders, instructions or priorities; port congestion; acts of or failure to act on the part of Buyer or its agents/employees; fires; floods; sabotage; nuclear incidents; earthquakes; storms; epidemics; strikes; lockouts or other labor difficulties; shortages of or inability to timely obtain proper labor, Products, components, shipping space or transportation, fuel, supplies or power at current prices; or due to limitations imposed by the extent of availability of Asta's normal manufacturing facilities.

If a delay excused per the above extends for more than 90 days and the parties have not agreed upon a revised basis for continuing providing Products/Services at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Asta) upon thirty (30) days' notice may terminate the Order(s) with respect to the unexecuted portion of the Products/Services, whereupon Buyer shall promptly pay Asta its reasonable Termination Charges and any other amounts due, upon submission of Seller's invoices thereof.

**NO THIRD PARTY BENEFICIARIES:** This Agreement shall not be construed to confer any rights or remedies upon any person not a party thereto, whether as a third party beneficiary or otherwise, against Buyer or Asta, their respective successors, assigns, and affiliates. Notwithstanding the foregoing, all employees, contractors, officers, shareholders or affiliates of Asta that are engaged in

providing the Products and Services hereunder, shall be third party beneficiaries and shall receive the benefits of the limitations of warranty provisions, indemnification provisions, and limitations of liability provisions hereunder.

**ASSIGNMENTS:** Buyer may not assign this Agreement/Contract without the prior written approval of the Asta.

**ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings and agreements between the parties related to the subject matter hereof. There are no representations, warranties, promises or inducements or other agreements between the parties in connection with the subject matter thereof, except as specifically set forth herein. No amendment or modification of these terms and conditions shall be valid or binding unless made in writing and duly executed by all parties hereto.

**WAIVER:** No delay or failure to exercise any right or remedy provided for herein shall be deemed to be a waiver thereof or acquiescence in the event giving rise to such right or remedy, but every such right and remedy may be exercised from time to time and so often as may be deemed expedient by the party exercising such right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any provided by law.

**NOTICE:** All notices to Asta which may or are required to be given pursuant to this Agreement, including but not limited to any Warranty claims, shall be made in writing and delivered via certified or registered mail - return receipt requested, and addressed to Asta at the following address:

Asta America by Janus International  
638 Cassville White Rd NW  
Cartersville, GA 30121

With a copy to:

Elliot H. Kahler, Esq.  
Janus International Group, LLC  
135 Janus International Blvd. Temple, GA 30179  
Attn: Legal Department

**SEVERABILITY:** The invalidity, of any part hereof shall not affect the validity of the remainder.

**STATUTORY REQUIREMENTS:** Asta reserves the right to make any changes in the general specifications of the Products which are required for the Products to conform to any statutory or other applicable legal requirement.

**DISPUTE RESOLUTION; GOVERNING LAW; FORUM:** The rights and obligations of the Buyer and Asta hereunder shall be governed in all respects by the law of the State of Georgia, U.S.A. Any claim or controversy arising out of or related to this Agreement or the breach thereof shall be subject to mandatory and binding arbitration before either Henning Mediation and Arbitration Services in Atlanta, Georgia or Miles Mediation and Arbitration Services in Atlanta, Georgia. The arbitration shall be before a single arbitrator mutually agreed upon by the parties from the panel of neutrals or, if no such agreement can be reached, by selection pursuant to the rules of the Arbitration service selected. The Arbitration shall be conducted and enforced pursuant to the laws Georgia Arbitration Act and the Rules of the Arbitration service selected. The Arbitration Award shall be final and binding and shall be enforceable in any court of competent jurisdiction. Nothing herein shall preclude a party from filing suit for the purpose of obtaining temporary or preliminary injunctive relief or to compel arbitration pursuant to the terms of this Agreement. The United Nations Convention on the International Sale of Products shall not apply. Notwithstanding the above provisions for mandatory arbitration, neither party shall be precluded from filing an action to compel compliance with the terms of this paragraph. The exclusive forum for adjudication of any such action to compel arbitration shall be in the Superior Court of Fulton County, Georgia or the United States District Court for the Northern District of Georgia, Atlanta Division. Buyer and Asta hereby consent to personal jurisdiction and venue in such courts in any proceeding authorized hereunder. Asta shall be entitled to recover any attorney's fees and costs incurred in the course of any collections efforts for payments due and owing hereunder or in connection with any arbitration proceeding or complaint to enforce same.

## EXHIBIT A

### A. PERFORMANCE OF INSTALLATION SERVICES

**A.1.** When required by an Order or Sale of Products, installation Services shall mean the services and materials, whether completed or partially completed, including all other labor, materials, equipment and services provided or to be provided by Asta to fulfill Asta's obligations under the Order or Sale of Products and any exhibits thereto or referred to therein.

**A.2.** With respect to the Services, Asta shall (i) execute the Services and materials required by each Order or Sale of Products, or execute the Services pursuant to such other document as the Asta and Buyer may mutually agree upon; and (ii) provide sufficient labor to complete the Services required by each Order or Sale of Products, but in the event additional resources are required as a result of changes in scope, additional costs may apply. Asta uses non-union labor.

**A.3.** Asta shall not be responsible for (i) providing electrical, heat, water or other utility services; (ii) water stains, water removal, or clean up in the Services area, or (iii) for delays or additional costs incurred as a result of the failure to comply with any state or local building ordinances not specifically identified by Buyer or its representative, in writing, at the time of Order or Sale of Products.

**A.4.** With respect to the Services, Buyer shall (i) pay Asta the amount for Services agreed upon in current funds in accordance with the terms set forth herein; (ii) secure and pay for the building permit as well as all other permits, fees, licenses and inspections necessary for proper execution and completion of the Services; (iii) provide safe and secure storage area for all material, tools, equipment, or Products related to the Services hereunder; (iv) provide clear and unobstructed loading area into building; (v) secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities; (vi) provide Asta with a clear path for continuous work by installing MEP work and fire protection prior to Asta installation; (vii) provide Asta with a dry and clean work area; (viii) provide all temporary facilities, including power, water, sanitation, adequate lighting, dumpsters, and free use of elevator or hoist without appointment; and (ix) provide Asta with any other item not specified hereunder as may be necessary for Asta to complete the Work and fulfill its obligations under the Order or Sale of Products.

**A.5.** Unless otherwise included in the Order or Sale of Products, (i) labor is excluded for custom field cutting of any of Asta's Products as part of any accommodation for obstructions. Such obstructions may be defined as but not limited to: HVAC, electrical conduits, sprinkler pipes, and any other obstruction that may pass through or around the hallway/partition system provided by Asta; (ii) material and labor are excluded for lining and trimming around the following areas: perimeter walls existing or provided by the building manufacturer, any walls composed of concrete or drywall, columns located anywhere either inside or outside of storage areas, exposed beams visible from the hallway or inside storage units, insulated walls exposed in hallways or from inside storage units, man doors located inside hallways or on walls provided by others, windows located on perimeter walls or in areas visible from hallway, inside stairwells, elevators entrances, entry vestibules, around hollow metal door(s) located in and around the hallway system, and covering any fire spray applications; and (iii) material and labor is excluded from pipe wrapping.