

These Terms apply to the purchase by Buyer from Seller of Products and Services provided by Seller, each of which is identified in the Contract. The Contract comprises the entire agreement between the parties, except as hereafter modified by the parties in writing and signed by the parties' authorized representatives. Buyer accepts these Terms by signing and returning Seller's proposal, by sending a purchase order in response to the proposal, by submitting instructions to Seller to ship the Product or commence the Services, or by accepting or paying for the Product or Service. No additional or different terms, conditions, or warranties other than those identified in the proposal and these Terms, and no agreement or understanding, oral or written, in any way purporting to modify these Terms, whether contained in Buyer's purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing, signed by Seller's authorized representative, and specifically referencing these Terms and stating that it modifies them. Buyer is hereby notified of Seller's express rejection of any terms inconsistent with these Terms or to any other terms proposed by Buyer. Neither Seller's subsequent lack of objection to any terms, nor the delivery of the Products or Services, shall constitute an agreement by Seller to any such terms. Trade custom, trade usage and past performance are superseded by these Terms and shall not be used to interpret these Terms.

1. Definitions.

"Additional Warranties" has the meaning set forth in Section 9(a).

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Confidential Information" has the meaning set forth in Section 13(a).

"Contract" means the accompanying proposal, credit application, quotation, order acknowledgement, or invoice identifying the Products and/or Services purchased by Buyer from Seller, together with these Terms and any other documents incorporated therein by reference, the agreed scope(s) of work and Seller's order acknowledgement as well as any changes under Section 17.

"Contract Price" means the agreed amount stated in the Contract for the sale of Products or Services, including adjustments (if any) in accordance with the Contract.

"Data" has the meaning set forth in Section 13(c).

"Hazardous Materials" means any chemical, compound, material, substance, or other matter that: (a) is defined as a hazardous substance, hazardous material or waste, dangerous good, or toxic substance under any legal authority applicable to the Site; (b) is regulated, controlled, or governed by any legal authority applicable to the Site; (c) is petroleum or a petroleum product; or (d) is asbestos, formaldehyde, radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

"Products" means all equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

“Required Consents” means any third party or governmental consents, approvals, permits, or other authorizations required to give Seller the right for the performance of Services to access and use the premises, hardware, software, firmware, and other products that Buyer uses, as well as any data or information associated therewith, without infringing any contractual obligations, confidentiality terms, ownership, license, patent rights, copyrights, trademarks, trade secrets, and other intellectual property, or proprietary rights of the providers or owners of the foregoing.

“Required Disclosure” has the meaning set forth in Section 18(f).

“Seller” means ASTA Industries, Inc. d/b/a ASTA AMERICA.

“Services” means all services Seller has agreed to perform for Buyer under the Contract, either directly or through a Seller-authorized subcontractor.

“Services Warranty” has the meaning set forth in Section 9(c).

“Site” means the premises where Products are used or Services are performed.

“Taxes” has the meaning set forth in Section 2(c).

“Terms” means these Terms and Conditions for Sale of Products and Services.

“Third-Party Product” has the meaning set forth in Section 9(b).

2. Price; Payment.

- a. Buyer agrees and acknowledges that the color and size of certain Products may alter the price of said Product. The Contract Price may be adjusted by Seller, upon thirty (30) days’ written notice to Buyer at any time prior to shipment and regardless of the acceptance or issuance of a sales confirmation, to reflect any increase in Seller’s cost of raw materials, components (e.g., steel), special features (e.g., color), operational costs (e.g., customs duties and taxes), transportation costs (e.g., fuel surcharges), acts by any governmental authority, or other factors beyond Seller’s control (e.g., specifications, quantities, and delivery schedules). Any changes to the Contract Price are effective as of the first day of the following month. If the Contract Price increases prior to delivery of the Products to a carrier for shipment to Buyer, then the Contract shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices.
- b. Except as otherwise agreed to by Seller in writing, the following payment terms apply:
 - i. Seller shall be entitled to payment by Buyer of all charges associated with Seller’s performance of Services and/or delivery of Products. Buyer shall pay Seller all invoiced amounts in U.S. dollars within thirty (30) days from date of invoice and without right of set-off. Buyer shall pay interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) and all costs of Seller’s collection efforts, including reasonable attorneys’ fees, on all late payments.
 - ii. If at any time Seller reasonably determines that Buyer’s financial condition or payment history does not justify the continuation of Seller’s performance, Seller shall be entitled to, including, but not limited to, restructure payments requiring full or partial payment in advance, request additional forms of payment security, suspend Contract fulfillment, or terminate the Contract.
- c. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under these Terms (collectively, **“Taxes”**). Any Taxes related to the Products and Services purchased pursuant to these Terms are the responsibility of Buyer (excluding taxes based on Seller’s net

income), unless Buyer presents, within thirty (30) days of the date of the applicable invoice, an exemption certificate acceptable to Seller and the applicable taxing authorities. The failure to timely provide such written notice shall serve to waive any right of Buyer to require Seller to refund, or to seek a refund from any governmental agency, of any Sales Tax charged to Buyer, received by Seller, and remitted to any governmental agency. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. In the event Seller is required to pay any such taxes or other charges, Buyer shall reimburse Seller therefor on demand. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will immediately pay Seller the amount of the Taxes and any penalties and interest related thereto.

- d. If a dispute arises between the parties concerning Buyer's alleged right to setoff or recoupment against Seller, the parties shall negotiate in good faith to resolve such dispute. Notwithstanding the foregoing, Buyer agrees that payments owed to Seller for Products supplied or Services rendered under the Contract are not subject to any setoff or recoupment by Buyer unless and until Seller agrees in writing to such setoff or recoupment, and that Buyer shall not exercise its right to setoff or recoupment in connection with any disputes or claims.
- e. Buyer grants Seller a purchase money or similar security interest in Products located in any jurisdiction where such security interest is permitted, as well as any proceeds therefrom, for the purpose of securing all obligations of Buyer hereunder. Buyer authorizes Seller to execute on Buyer's behalf and file such financing statements as Seller deems appropriate to perfect and/or notify Buyer's creditors of Seller's security interest. In this regard, Buyer hereby grants Seller an irrevocable power of attorney, coupled with an interest, with respect to filing any such financing statements.
- f. Seller shall have no liability whatsoever if Buyer makes payment (in whole or in part) to: (i) any bank account other than the bank account specified by Seller or (ii) to any entity other than the entity listed on the Contract. Seller shall not be responsible for any losses suffered by Buyer due to third party fraud, including, without limitation, false change of bank account communications, identity theft and other scams. To the extent Buyer receives any communication notifying Buyer of a change in Seller's designated bank account, Buyer is required to verify the authenticity of the same directly with Seller.
- g. Seller expressly reserves the right to require a deposit in connection with any Contract as a condition precedent to Seller's performance. Any deposit(s) delivered by Buyer are non-refundable and will be applied to the final billing. Buyer understands and acknowledges that its delivery of a deposit is used by Seller in reliance on Buyer's acceptance of the Contract, and as a result, is expressly non-refundable in the event of Buyer default, in connection with any termination (except for Section 15(a)), or as otherwise set forth in these Terms.

3. Deliveries; Title Transfer; Risk of Loss; Storage.

- a. Seller shall deliver Products to Buyer using Seller's standard methods for packaging and shipping. All delivery costs and charges are prepaid by Seller and added to Buyer's invoice. Seller shall not be liable in any claim asserted by Buyer with respect to delivery. Partial deliveries will be permitted. Each shipment will constitute a separate sale, and Buyer will pay for the Products shipped whether the shipment is in whole or partial fulfillment of Buyer's order. Freight rates are subject to fuel surcharges at the time of shipping and invoicing. Seller may deliver any or all Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all materials, payment security (if any), and information necessary for Seller to proceed without interruption with its obligations under the Contract. Buyer shall dispose of the packing materials at its own expense, and shall defend, indemnify, and hold harmless Seller for any and all costs or expenses of any kind in connection with such packing

waste.

- b. If Products delivered do not conform to the specifications set out in the Contract, Buyer shall provide Seller with written notice within twenty-four (24) hours after delivery, which Buyer agrees is a reasonable period of time under the circumstances. In the absence of any such notification, Buyer shall be deemed to have accepted the Products. In the event that any Products are demonstrated to have been delivered in nonconformance with the Contract and such non-conformance is reported within the twenty-four (24) hour period, Seller's liability shall, at its option, be limited to: (i) replacing such nonconforming Products with conforming Products; or (ii) credit or refund the Contract Price for such nonconforming Products.
- c. Title to Products shall pass to Buyer on the earlier to occur of: (i) delivery of the Products to Buyer, (ii) pickup of the Products by Buyer from Seller, or (iii) delivery of the Products to storage. Notwithstanding the foregoing, for any software provided by Seller hereunder, only the license to the software transfers as set forth herein, and title to leased equipment, including equipment of Seller which will be located at Site during all or some portion of the Contract term without Seller's personnel present shall remain at all times with Seller. In all events risk of loss shall transfer to Buyer upon title passage.
- d. If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Seller, Seller will notify Buyer and then may ship Products to a storage facility, including a facility within the place of manufacture. If Seller places Products in storage, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer if they had not already passed and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices; (iii) a storage charge equal to 5% of the Contract Price allocable to the stored Products, which Buyer agrees is a reasonable amount under the circumstances; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Products to the originally agreed point of delivery.

4. Damages to Door Products.

- a. The parties acknowledge that, while Seller's doors are packaged and loaded with care to minimize transit damage, small dents or dings, as well as light paint damage due to wear and tear in transit, may occur due to road conditions and shipper handling procedures outside Seller's control. The parties hereby agree that such minor damage is not an acceptable reason to return or refuse delivery of a door. Seller will supply touch up paint when delivering doors.
- b. Visible shipping damage to Products other than those described in the immediately preceding paragraph must be reported to Seller, in writing, immediately. In the absence of any such notification, Buyer shall be deemed to have accepted the Products. Buyer must check the Products upon arrival as Seller will not be responsible for any damage or missing items once Buyer has already signed for them. In the event that there is damage to a shipping carton, Buyer must ask permission from the carrier to open and inspect the package before signing for it. In the event that any Products are demonstrated to have been delivered in a damaged state (excluding the damage identified in Section 4(a)) and such non-conformance is reported as set out herein, Seller's liability shall, at its option, be limited to: (i) replacing such damaged Products with conforming Products; or (ii) credit or refund the Contract Price for such damaged Products.

5. Services.

- a. Services will be performed by one crew and in the event that additional crew(s) are required additional costs may apply. Services shall be performed in a workmanlike manner consistent with the generally recognized industry standards for similar services and in accordance with any applicable federal, state,

and local laws, rules, codes, and regulations.

- b. Seller may engage subcontractors to provide or assist in providing Services, in which case Seller remains responsible for the fulfillment of its obligations under the Contract and for the performance of the Services.
- c. Buyer shall provide Seller and its affiliates and their employees, subcontractors, and agents access to Site and any other facilities free of charge as necessary for Seller's performance of the Contract. Prior to Seller starting any work on Site, Buyer will provide documentation that identifies any existing Hazardous Materials on or about the Site. Seller will have no responsibility or liability for existing Site conditions.
- d. Seller 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, (iii) 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; (iv) custom field cutting of any Products as part of any accommodation for obstructions at the Site; (v) lining and trimming around 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; or (vi) pipe wrapping.
- e. If, at the Site, Seller encounters Hazardous Materials that require special handling or disposal, Buyer shall immediately take whatever precautions are required to eliminate legally the hazardous conditions so that the work under the Contract may safely proceed. Seller shall not be obligated to commence or continue work until Buyer causes the hazardous conditions to be removed. If any such Hazardous Materials cause an increase in Seller's cost of or time required for performance of any part of the work, the parties shall make an equitable adjustment to the price and schedule and modify the Contract in writing accordingly.
- f. Buyer shall indemnify and hold Seller harmless for any claims, damages, losses, causes of action, demands, judgment, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present on or about the Site prior to commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or its employees, agents, contractors, or subcontractors, or (iii) brought, generated, produced, or released on Site by parties other than Seller.

6. Buyer Responsibilities. Buyer agrees it bears sole responsibility for selecting Products and for determining whether such Products are appropriate for use by its employees, customers, and agents in their applicable work environment(s). Buyer agrees to: (i) cooperate with Seller's performance of the Services; and (ii) respond promptly to any reasonable requests from Seller for instructions, information, or approvals required by Seller to provide the Services.

- a. Buyer further agrees to take any and all actions reasonably necessary to enable Seller to perform the Services in an effective and efficient manner, including, but not limited to, (i) reviewing architectural blueprints and site plans to ensure such blueprints and plans conform to Seller's drawings; (ii) where applicable, verifying that Seller's drawings, load criteria, and fire code requirements (i.e., live load, wind load, firewalls) conform to all building codes, zoning codes, and any other requirements of local authorities; (iii) clarifying any inclusions or exclusions from the architectural plans and/or specifications; (iv) obtaining all permits and licenses required (including work permits and licenses); (v) furnishing and

installing any electrical, plumbing, heating, sprinklers, trash removal, sweep-up, wash down of driveways, and any work not specified to be performed by Seller; (vi) educating, coordinating, overseeing, and supervising all aspects of the Site conditions and workplace safety; (vii) procuring security of the Site, twenty-four (24) hours per day; (viii) providing a dry, clean, and unobstructed work area; (ix) supplying a safe and secure storage area for Seller's materials and supplies; (x) ensuring that the Site is at all times freely accessible to Seller personnel (accessible for at least a sixty-hour work week); (xi) coordinating any and all roadway shut downs or obstructions with both the Department of Buildings and the Department of Transportation; and (xii) providing all safety measures (including, but not limited to, flagmen, signs, warning devices, barricades, fences, guardrails, etc.) required by applicable law, regulation or code to control vehicular and pedestrian traffic. Seller is entitled to rely upon all drawings, routings, dimensions, bills of material, and other items supplied by Buyer for the manufacture of Products, and any change to the foregoing will result in additional charges.

- b. Buyer will promptly obtain all Required Consents necessary for Seller to provide the Services, and provide evidence of the same to Seller where reasonable or necessary. Buyer will indemnify, defend, and hold Seller, its Affiliates and subcontractors, and their respective directors, officers, employees, and agents harmless against any and all claims, losses, liabilities, and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims made against Seller, alleged to have occurred as a result of Buyer's failure to provide any Required Consents. Seller will be relieved of the performance of any obligations to the extent such obligations would reasonably be expected to be affected, or are affected, by Buyer's failure to promptly obtain and provide any Required Consents to Seller.
- c. Buyer accepts all risks of transit, theft, vandalism, and any other loss of Seller or its subcontractors' materials, tools, and equipment at the job site or stored off premises; provided, however, that Buyer does not accept any loss of Seller or its subcontractors' materials, tools, and equipment at the job site or stored off premises if such loss directly results from Seller or its subcontractors' gross negligence. Seller reserves the right to require Buyer to provide, at Buyer's sole cost and expense, additional arrangements for the security of materials and equipment storage at the job site. If materials, tools, or equipment of Seller or its subcontractors are stolen or lost from the job site, Buyer as the party charged with security of the job site will fully compensate Seller or its subcontractors for any loss suffered by Seller or its subcontractors that is not fully reimbursed by insurance.

7. Excusable Delays. Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or its agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportations shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and schedule adjustment.

8. Compliance with Laws, Codes, and Standards.

- a. Seller represents that Products will be produced in compliance with applicable fair labor standard laws, occupational safety and health laws, and laws related to non-segregation and equal employment opportunity.
- b. Contract Price, delivery, and performance dates and any performance guarantees will be equitably

adjusted to reflect additional costs or obligations incurred by Seller resulting from a change after Seller's proposal date in industry specifications, codes, standards, applicable laws, or regulations.

- c. Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not transship, re-export, divert, or direct Products other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Seller's invoice.
- d. Notwithstanding any other provisions, Buyer shall timely obtain any required authorization, such as an export license, import license, foreign exchange permit, work permit, or any other administrative authorization, even if Seller applies for the authorization.
- e. Upon information and belief, Seller's Products are compliant with the ADA Accessibility Guidelines (ADAAG). Any representation with respect to ADAAG accessibility after the sale of Products is the express responsibility of the Buyer or owner of the respective facility where the Products reside, and Seller shall have no liability in connection with any third-party representation regarding Product ADAAG compliance.

9. Limited Warranty.

- a. If Seller provides any Products, such Products are covered by the applicable limited warranty: (i) the Limited Paint Warranty (<https://www.astaamerica.com/paintwarranty>); (ii) the Rolling Steel Slat Door Limited Warranty (<https://www.astaamerica.com/limited-door-warranties-asta-america>); (iii) the Commercial Sheet Door Limited Warranty (<https://www.astaamerica.com/limited-door-warranties-asta-america>); or (iv) the Self Storage Door Limited Warranty (<https://www.astaamerica.com/limited-door-warranties-asta-america>), which are incorporated herein by reference (collectively, the **"Additional Warranties"**).
- b. Products manufactured by a third party (**"Third-Party Product"**) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. If Third-Party Product warranties are not transferrable by suppliers to Buyer, Seller, on behalf of Buyer, will, as its sole obligation relating to components and materials subject to Third-Party Product warranties, assist and actively endeavor to assert Buyer's Third-Party Product warranty claim rights (excluding litigation). Seller does not guarantee and shall have no responsibility or liability for suppliers' fulfillment of their respective Third-Party Product warranty obligations. Buyer acknowledges that Seller utilizes components and materials from many different suppliers on any given project.
- c. Seller further warrants that Products (if Services included) will be installed in a workmanlike manner, and that the installation of the materials will be free from defects in workmanship for a period of ninety (90) days from the date of installation (**"Services Warranty"**). In the event Buyer notifies Seller in accordance with Section 9(d) that the Services are not in conformity with the Services Warranty during the 90-day warranty period, and Seller determines that the Services Warranty applies, Buyer's sole and exclusive remedy regarding the breach of warranty is that Seller will, without charge to Buyer, re-perform the Service(s) so that it conforms to the Services Warranty.
- d. Buyer shall notify Seller in writing of any warranty claim within ten (10) days of becoming aware of the

defect, nonconformity, or issue that gives rise to the warranty claim. The notification shall include a detailed description of the defect, nonconformity, or issue, the date it was discovered, and any other relevant information that may assist Seller in identifying and addressing the problem. Buyer shall cooperate fully with Seller's investigation of such claim, including but not limited to, providing access to the Products in question, furnishing any relevant documentation or evidence, and allowing Seller or its representatives to inspect the Products at a mutually agreed time. If Buyer fails to notify Seller of the warranty claim within the ten (10) day period, Buyer shall be deemed to have waived any right or claim with respect to the non-conforming Product or Service. If Buyer fails to cooperate with Seller's investigation, Seller reserves the right to deny the warranty claim, and Buyer shall have no recourse against Seller for the alleged defect, nonconformity, or issue. If Buyer gives such written warranty claim notice to Seller, then Seller shall, in its sole discretion, determine whether the Additional Warranties, Services Warranty, Third-Party Product warranty, or no warranty applies. In the event Seller determines that the Third-Party Product warranty or no warranty applies, Seller may charge Buyer for repair services at Seller's then-current service fee rate.

- e. Seller's warranty obligations shall not apply to materials that (i) have been altered or repaired by someone other than Seller, (ii) have been subjected to misuse, neglect, improper use, application, or installation, (iii) are normally consumed in operation, (iv) have a normal life expectancy that is shorter than the warranty period stated herein, (v) have been subjected to Acts of God and/or extreme weather conditions or atmospheric conditions, or (vi) any circumstance beyond Seller's control. According to the Door & Access Systems Manufacturers Association (DASMA), "a common occurrence with rolling door products, under normal usage of such products, is the wearing away of the painted surface of the curtain. This condition occurs as the result of the curtain repeatedly coiling upon itself, and then repeatedly uncoiling, upon the opening and closing of a rolling door." Therefore, the normal wear and tear from metal to metal contact is not covered under the Seller's paint warranty.
- f. This Section 9 sets forth the exclusive remedies and obligations for claims based upon defects in or nonconformity of any Products provided by Seller and any Services performed by Seller, whether the claim is in contract, warranty, tort (including negligence of any degree or strict liability) or otherwise. **EXCEPT FOR THE WARRANTIES SET OUT IN THIS SECTION 9 AND ANY APPLICABLE ADDITIONAL WARRANTY EXPRESSLY REFERRED TO IN THESE TERMS, SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING ANY (i) CONDITION OR WARRANTY OF MERCHANTABILITY; (ii) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) CONDITION OR WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
- g. **These limited warranties shall not be effective and are not binding on Seller unless and until Seller has been paid in full for the Products and/or Services pursuant to these Terms.**

10. Indemnification. Buyer shall indemnify, hold harmless, and defend Seller against any and all losses, damages, liabilities, deficiencies, claims, actions, injuries, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees, that are incurred by and/or awarded against Seller, arising out of any third party claim alleging: (a) breach or non-fulfillment of any provision of these Terms by Buyer or Buyer's personnel; (b) any negligent or more culpable act or omission of Buyer or its personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under these Terms or any Order; (c) any bodily injury, death of any person, or

damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Buyer or its personnel (including any reckless or willful misconduct); or (d) any failure by Buyer or its personnel to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under these Terms or any Order.

11. Limitation of Liability.

- a. THE TOTAL LIABILITY OF SELLER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THE CONTRACT OR USE OF ANY PRODUCTS OR SERVICES SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PRODUCT OR PART THEREOF WHICH GIVES RISE TO THE CLAIM, REDUCED BY ANY AMOUNT DUE SELLER. SELLER'S LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY ENFORCE A CLAIM THAT ACCRUED PRIOR TO THAT DATE BY COMMENCING AN ACTION BEFORE THE EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS OR REPOSE, BUT NOT LATER THAN ONE (1) YEAR AFTER THE EXPIRATION OF SUCH WARRANTY PERIOD.
- b. SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF PRODUCTS OR SERVICES, OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, SAVINGS, USE, REVENUES, COST OF SUBSTITUTE PRODUCTS, SERVICES OR REPLACEMENT POWER, COST OF COVER OR REPLACEMENT, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
- c. If Buyer is supplying Seller's Products or Services to a third party or using Seller's Products or Services at a facility owned by a third party, Buyer shall require the third party to agree to be bound by Section 11. If Buyer does not obtain such agreement for Seller's benefit or if such agreement is found void or unenforceable, Buyer shall indemnify, defend, and hold Seller harmless from and against any and all liability arising out of claims made by the third party in excess of the limitations and exclusions of this Contract.
- d. For the purpose of Section 11, the term "**Seller**" shall mean Seller, its affiliates, subcontractors, and suppliers of any tier, and their agents and employees, individually or collectively.

12. Dispute Resolution; Governing Law.

- a. Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity, or termination, shall be resolved in accordance with this Section 12 and will be settled, if possible, by negotiation of the parties. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management of each party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of higher management, or any later date to which the parties may agree, either party may submit any claim, legal action, or proceeding (including without limitation claims for set-off or counterclaim) regarding the dispute shall be brought in the U.S. District Court for the Northern District of Georgia, or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts of Fulton County, Georgia, and the parties irrevocably consent to the exclusive jurisdiction of those courts for such claims. Each party submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its person and property.
- b. The validity, performance, and all matters relating to the interpretation and effect of the Contract and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws of the State of Georgia, excluding the rules on the conflict or choice of laws.

13. Confidentiality.

- a. Any non-public, confidential or proprietary information, including, without limitation, pricing information, Data (hereinafter defined), production processes or specifications (collectively, “**Confidential Information**”), provided by Seller to Buyer is proprietary to Seller and shall be held in confidence by Buyer, shall only be used by Buyer in connection with the respective sale, and shall not be used for any other purposes or disclosed to third parties without Seller’s prior written consent. Buyer shall be liable for any loss to Seller or commercial gain by others from unauthorized use of Seller’s Confidential Information occasioned by Buyer’s failure to comply with this provision. The purchase of Products shall not include any right to supply of technical information such as drawings or specifications.
- b. Buyer will protect Seller’s Confidential Information with at least the same degree of care as Buyer would protect its own Confidential Information, but in no event with less than a reasonable degree of care and in accordance with applicable laws.
- c. Proprietary information, including drawings, documents, technical data, reports, software, designs, inventions and other technical information, whether or not constituting a trade secret (hereinafter collectively referred to as “**Data**”), supplied in connection herewith, by Seller shall remain Seller’s sole property and shall be held in confidence by Buyer. Data shall not be reproduced, used or disclosed to others by Buyer without Seller’s prior written consent. Upon completion of the Contract, Buyer shall promptly destroy, at its own costs, all Data together with all copies or reprints thereof then in Buyer’s possession or control, and Buyer shall deliver within forty-eight (48) hours of such destruction to Seller written certification signed by an authorized representative of its compliance with this Section. Buyer shall thereafter make no future use, either directly or indirectly, of any Data or any information derived therefrom without Seller’s prior written consent. The foregoing shall in no way obligate Seller to provide or supply Data. Data shall not include information that is readily available to the public through no wrongful act of Buyer or others.
- d. The obligations of this Section 13 shall survive expiry or termination of the Contract for any reason.
- e. Buyer agrees that any unauthorized disclosure of Seller’s Confidential Information will cause immediate and irreparable injury to Seller and that, in the event of any breach of this Section 13, Seller will be entitled to immediate injunctive and other equitable relief, in addition to any other available remedies.

14. Health and Safety Matters.

- a. Buyer shall take all necessary precautions, at all times, for the health and safety of Seller personnel at Site. These include, but are not limited to: providing Seller for review, and instructing Seller’s personnel regarding, Buyer’s safety practices, proper and safe handling of, and protection of Seller’s personnel from exposure to, Hazardous Materials; energization and de-energization of all power systems (electrical, mechanical, and hydraulic); and conducting periodic safety meetings.
- b. If, in Seller’s reasonable opinion, the safe execution of the Contract at Site is, or is apt to be, imperiled by safety concerns, local conditions, war (declared or undeclared), armed conflict or threatened conflict, civil unrest, terrorist acts or threats, threat to safety or well-being of the Site or personnel or Seller’s persons or interests, the presence of or threat of exposure to Hazardous Materials or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or transfer such performance and supervise it at a location solely determined by Seller. Buyer shall assist in any evacuation. Any delay that results shall be considered excusable.

- c. Before signing and returning Seller's proposal, issuing a purchase order, or submitting instructions to Seller, Buyer shall advise Seller in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to Products and Services.

15. Cancellation, Termination, and Suspension.

- a. No Products may be returned, rescheduled, or cancelled without prior written approval of Seller. A 25% restocking fee may be assessed on any returned Products. Orders placed with and accepted by Seller may not be cancelled except with Seller's written consent prior to shipment and Buyer's acceptance of Seller's cancellation charges, which shall protect Seller against all costs and losses. Seller reserves the right to cancel any sale hereunder prior to delivery in Seller's sole discretion without liability to Buyer (except for refund of monies already paid).
- b. Buyer may terminate the Contract (or any portion thereof) for cause and/or cause any Products in transport to Buyer or in storage for Buyer to be returned to Seller wherein in either event ownership thereof shall immediately revert to Seller, if Seller: (i) substantially breaches a material obligation which does not otherwise have a specified contractual remedy, provided that: (A) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate Contract, and (B) Seller shall have failed, within thirty (30) days after receipt of the notice (or such extended period as is considered reasonable by the parties), to either commence and diligently pursue cure of the breach, or provide reasonable evidence that the breach has not occurred; (ii) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or (iii) fails to pay any amount when due under any Order for Products or Services, and such failure continues for seven (7) days thereafter.
- c. If Buyer terminates the Contract as provided in Section 15(b): (i) Buyer shall pay Seller all portions of the Contract Price allocable to work performed and all Services performed at Seller's then-current standard time and material rates; and (ii) Seller shall pay Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably paid by Buyer to another supplier for that scope.
- d. Seller shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 7) lasting longer than 120 days; (iii) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; (iv) Buyer materially fails to comply with any terms of the Contract; or (v) Buyer fails or delays making any payment when due or fulfilling any payment conditions under any contract between the parties.
- e. If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 15(b), Buyer shall pay Seller for all Products completed or partially completed and Services performed before the effective date of termination, plus a cancellation charge equal to 5% of the Contract Price allocable to the uncompleted Products and unperformed Services, as liquidated damages and not as a penalty. The following shall apply when determining the amount due from Buyer for Services performed before the date of termination: (i) for Services performed under time and material pricing, Buyer shall pay for all hours performed at Seller's then-current standard time and material rates, and (ii) for Services performed under a firm fixed price, Buyer shall pay (A) the applicable price for all milestones achieved

and (B) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Seller's then-current standard time and material rates.

- f. Buyer shall pay any reasonable expenses incurred by Seller in connection with a suspension or termination, including expenses for repossession, fee collection, demobilization/remobilization, or costs of storage during suspension upon submission of Seller's invoice(s). The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

16. Intellectual Property.

- a. Seller, at its sole expense, shall defend Buyer from any action based upon a claim that a Product infringes any valid third-party U.S. patent, copyright, trade secret, or other proprietary right, and shall reimburse Buyer for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against Buyer pursuant to any such actions. Seller's obligations hereunder are contingent upon Buyer providing Seller prompt written notice of the claim; complete control of the defense of and the right to settle such claim; and all available information, assistance, authority, and cooperation to enable Seller to defend or settle such claim.
- b. If Buyer fails to provide a claim notice to Seller under Section 16(a), Seller shall not be liable for any losses that result from a delay in providing a claim notice, which delay materially prejudices the defense of the related third-party claim. Each claim notice must contain a description of the third-party claim and the nature and amount of the related losses (to the extent that the nature and amount of the losses are known at the time).
- c. If a Product or Service or any component thereof becomes, or in Seller's opinion is likely to become, subject of such a claim of infringement, Seller shall be entitled to, at its sole option, either procure the right for Buyer to continue to utilize the Product or such impacted component of the Product, or replace or modify it so that it becomes non-infringing. If neither of the foregoing is commercially and reasonably available to Seller, where applicable, Buyer shall return all Products.
- d. Seller shall have no obligation or liability with respect to any Claim based upon: (i) any Products that have been altered, modified, or revised; (ii) the combination, operation, or use of any Products with other products or services when such combination is part of any allegedly infringing subject matter; (iii) unauthorized use of Products, including, without limitation, a breach of Contract provisions; or (iv) Products made or performed to Buyer's specifications.
- e. This Section 16 states Seller's entire liability for indemnification for intellectual property rights infringement for Products and Services.
- f. Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured or developed by Seller, only the indemnity of the manufacturer or developer, if any, shall apply.
- g. Each party shall retain ownership of all Confidential Information and intellectual property, it had prior to the Contract. All intellectual property conceived, created, or provided by Seller, whether alone or with any contribution from Buyer or its personnel, shall be owned exclusively by Seller. To the extent that Buyer may acquire any right or interest therein, Buyer irrevocably assigns all such right and interest exclusively to Seller, waives all moral rights in favor of Seller, and agrees to execute assignments and other documentation as necessary to achieve that result. Nothing in this Contract shall be deemed to grant a license directly or by implication, estoppel, or otherwise, to any such intellectual property, although the parties may provide for such a license in a separate written agreement.

17. Changes.

- a. Seller reserves the right to alter, modify, redesign, or discontinue Products or any components of Products and change its service, warranty, support, or other policies, without notice and without any obligation to Buyer.
- b. Each party may at any time propose changes in the schedule or scope of Products or Services in the form of a draft change order. The parties may mutually agree on the length of time within which a decision shall be made regarding the change. Seller is not obligated to proceed with the changed schedule or scope until both parties agree to such change in writing. If mutually agreed, the changes will be documented in a written document signed by authorized representatives of each party. Any equitable adjustments in the Contract Price or schedule changes resulting from applicable laws, rules, and regulations shall be treated as a change within the meaning, and subject to the requirements, of this Section 17. Unless otherwise agreed by the parties, pricing for additional work arising from changes in laws, rules, and regulations shall be at time and material rates.

18. General Clauses.

- a. Seller may change the Terms at any time and without notice to Buyer. The Terms in force at the time Buyer enters into a Contract with Seller will apply to such Contract.
- b. Seller may assign its rights and obligations under the Contract, in part or in whole, to any of its affiliates without Buyer's consent. Buyer agrees to execute any documents that may be necessary to effect Seller's assignment. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller's prior written consent shall be void.
- c. To the extent Buyer's data or information includes personal data, Seller represents and warrants to only process such data pursuant to its privacy policy as set forth at <https://www.janusintl.com/privacypolicy>. Contact privacy@janusintl.com for further questions.
- d. Buyer agrees that in connection with its purchase hereunder, it shall comply with all applicable anti-corruption laws, including the Foreign Corrupt Practices Act of 1977 (15 U.S.C. Sections 78DD-1, et. seq.). Seller may terminate the Contract if it has a good faith belief that Buyer has violated, intends to violate, or has caused a violation of any anti-corruption laws.
- e. Buyer shall notify Seller immediately upon any change in the ownership of more than 50% of Buyer's voting rights or in Buyer's controlling interest. If Buyer fails to do so or Seller objects to the change, Seller may (i) terminate the Contract, (ii) require Buyer to provide adequate assurance of performance, or (iii) put in place special controls regarding Seller's Confidential Information.
- f. Buyer shall not issue or permit to be issued press releases or publicity in any form that relates to the Contract or the subject matter thereof without the express written consent of the Seller, except if and to the extent that Buyer (based on the reasonable advice of counsel) is required (i) by applicable law, (ii) pursuant to any rules or regulations of any securities exchange of which the securities of Buyer are listed or traded, or (iii) in connection with enforcing its rights under the Contract (each a "**Required Disclosure**") to make a public disclosure or filing. In the event of a Required Disclosure under (i) and (ii), Buyer shall consult with Seller regarding the substance of the Required Disclosure and allow Seller to review, comment on, and reasonably change the content of the Required Disclosure prior to its publication or filing. Buyer shall be liable for any failure of its affiliates or representatives to comply with the restrictions set forth under this Section 18(f).

- g. Any covenant or provision of the Contract which by its express terms is required to be observed, kept or performed after termination hereof, or which by its nature and effect is intended to survive termination of the Contract shall so survive termination of the Contract.
- h. No waiver by Seller of any of the provisions of the Contract is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Contract operates, or may be construed, as a waiver thereof.
- i. The Contract may be executed in multiple counterparts that together shall constitute one agreement. A signed copy of the Contract executed electronically and delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the Contract.

19. Notification. All notices, approvals, consents, requests for demands required or permitted to be given under these Terms to Seller shall be in writing and shall be deemed sufficiently given when deposited in the mail, registered or certified, postage prepaid, and addressed to:

Mailing Address

ASTA Industries, Inc
638 Cassville White Road NW
Cartersville, Georgia 30121

With a Copy to:

Janus International Group, LLC
c/o Legal Department
135 Janus International Blvd
Temple, GA 30179