

**ASM MODULAR SYSTEMS, INC.**  
**SALES TERMS AND CONDITIONS**

These are the Terms and Conditions governing sales by ASM Modular Systems, Inc. ("ASM"), and are incorporated by reference in every order accepted by ASM (each such order, as accepted by ASM in its Order Acknowledgement, a "Contract").

The quantity, quality, description of, delivery schedule and price for, ASM products ("Products") shall be those set out in the ASM Order Acknowledgement (subject to the general terms and conditions below).

Placing an order for ASM products constitutes acceptance of these Terms and Conditions of Sale. No addition to, waiver of or modification of these Terms and Conditions, nor anything stated on the Buyer's Purchase Order or Terms and Conditions, shall be binding on ASM unless expressly agreed to in writing by ASM, which writing states that it supersedes these Terms and Conditions in that regard, and the specific provision so stating has been initialed as "accepted" by ASM. Any proposal for additional or different terms or any attempt by Buyer to vary any of the terms of this document is hereby objected to and rejected, but such proposal shall not operate as a rejection of the Contract unless such variations are in the description of the product, quantity, price or delivery schedule. Any prior agreement with Buyer with respect to terms and conditions of sale shall not apply.

**1. Payment.**

a. Domestic: Subject to the credit approval of ASM, payment terms are net 30 days from the date of shipment with no cash discount, retention or withholding allowed for any reason whatsoever. The payment terms set forth herein are subject to Buyer and ASM maintaining a mutually acceptable credit arrangement which may be modified by ASM at any time.

b. International: Payment terms are by an irrevocable letter of credit or cash in advance unless other payment arrangements have been established in writing.

c. Overdue payments will bear interest at the lesser of 1½% per month or the maximum rate permitted by applicable law. ASM reserves the right to withhold any or all shipments to the Buyer if any amount owed by Buyer to ASM under any order is more than 10 days past due. In the event of such a default, ASM shall not be under any obligation to ship any pending order until all outstanding invoices are paid, regardless of whether some of the outstanding invoices are not yet past due and, unless otherwise agreed in writing, Buyer has provided adequate assurances of payment, acceptable to ASM, with respect to all pending orders.

**2. Price.** Unless otherwise specified in the Order Acknowledgement, all prices expressed are F.O.B. Ladson, SC (ASM facility) for domestic sales and ex works (Shanghai, People's Republic of China port) for international sales, and include standard ASM packaging of material. Prices shall be subject to adjustment to reflect any increased costs in effect at the time of shipment.

**3. Quotations.** All quotations are valid for 30 days from date of issue unless otherwise stated in writing, subject to price adjustments as in accordance with Section 2.

**4. Order; Changes.**

a. Orders: Orders must be in writing and submitted to ASM by Buyer. Orders shall be directed to ASM's Customer Service Department for processing. Orders will be accepted only upon issuance of an Order Acknowledgement by ASM.

b. Cancellations: No cancellations are permitted on custom orders. Other orders for product may be cancelled until the earlier of three weeks prior to the scheduled date of shipment or commencement of manufacture, however, ASM may charge a cancellation fee of up to 50% of such order. No cancellations are allowed within three weeks of scheduled shipment.

c. Order Acknowledgments; Product Allocation: The Order Acknowledgement acts as Buyer's confirmation that ASM is supplying the product ordered by Buyer on these Sales Terms and Conditions. It is the Buyer's responsibility to review ASM's Order Acknowledgment and to make certain that it is correct in all particulars, then sign and return it within two (2) business days of the issuance date. Unreturned Order Acknowledgments or those returned more than two (2) business days after issuance will be considered by ASM to be acceptable to Buyer in all particulars. Acceptance of product constitutes conclusive evidence of acceptance of the terms of the Contract.

d. Shortage of Product. In the event of shortage of product, ASM reserves the right to allocate goods among its customers.

e. Order Modification: Revisions or additions to an order must be in writing and will be accepted only if confirmed in writing by ASM. An order may be revised by the Buyer up to three weeks prior to the scheduled ship date. Revisions submitted within three weeks of the scheduled ship date may result in the Buyer's order being rescheduled with the current production lead time for the products ordered and ASM will not be responsible for any resulting delays. All revision requests will be addressed on an individual basis and will become valid only if and when confirmed in writing by ASM. Each order will be allowed two routine order revisions at no administrative charge up to three weeks prior to scheduled ship date, provided, however that such revisions cannot involve variations, on a cumulative basis, of more than 10% of the price or volume from the original order. In the event that such variations exceed such 10% threshold, ASM reserves the right to cancel the order in its entirety.

f. The Buyer shall be responsible to ASM for ensuring the accuracy of the information in the ASM Order Acknowledgement, and for giving ASM any further necessary information relating to the Products within a sufficient time to enable ASM to perform the Contract in accordance with its terms.

g. ASM reserves the right to make any changes in the specification of the products which are required to conform to any applicable safety or other statutory requirements which do not materially affect their quality or performance.

**5. Shipment and Storage.**

a. ASM will confirm an order's anticipated ship date in writing prior to manufacturing. Buyer-initiated shipment delays beyond two business days of the acknowledged ship date may result in Buyer's order being rescheduled with the current production lead time for the products ordered and Buyer's order being shipped Best Way by ASM at Buyer's expense, or Buyer's order being stored at Buyer's expense.

b. If the cost of manufacture, storage or delivery of the products is increased as a result of the Buyer changing the estimated delivery date, quantity or specification for the product or where there is any delay resulting from any change of instructions of the Buyer or a failure of the Buyer to give ASM adequate information or instructions (including any failure to advise ASM of any delivery constraint) then ASM reserves the right to increase the price to reflect such increase in cost and ASM will give notice to the Buyer at any time before delivery of the product of such increase in price.

c. ASM is not responsible for on-site storage at premises other than at ASM's premises prior to delivery to carrier, or for any damages resulting from improper storage or partial or incomplete installation for any reason whatsoever. Buyer may be charged a storage fee for any product that has not been shipped due to Buyer's acts or failure to act within 30 days of manufacture. ASM reserves the right to treat such product as abandoned, or to resell or dispose of same and Buyer shall be responsible for the balance of the purchase price therefore net of resale or scrap proceeds, and for applicable storage fees and costs of sale.

d. All claims regarding lost, damaged or delayed shipments should be reported to the common carrier involved. The settlement of such claims is between the Buyer and the common carrier. Claims for short shipments should be reported to ASM in writing immediately.

e. Any anomalies with the shipping and order must be communicated to ASM in writing as soon as discovered. Such reporting is for informational purposes only and does not constitute any liability on the part of ASM.

f. Where the products are to be delivered in installments, failure by ASM to deliver any one or more of the installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

**6. Delivery and Freight; Risk of Loss.**

a. Delivery to the carrier to the location specified in the Order Acknowledgment shall constitute delivery to the Buyer and the Buyer shall assume all risk for subsequent loss or damage. ASM cannot guarantee delivery by a common carrier on any specific date. Buyer is responsible for the validation of all freight rates from point of delivery by ASM in accordance with the Order Acknowledgement.

b. Delivery dates are estimates only and ASM makes no guarantee with respect to same. ASM will use reasonable efforts to ship promptly, but will not be liable in any manner for delays or inability to ship for any reason.

c. Title passes only upon Buyer's payment in full for the product.

**7. Limitation of Actions and Liability; Offset.** Any cause of action arising out of, or in any way connected with, the products or services furnished by ASM must be brought by Buyer within one year from the date of delivery of the products. Under no circumstances will ASM's liability exceed the purchase price paid to ASM for such products. *In no event shall ASM be liable for any special, incidental or consequential damages, including overhead or lost profits, cost of substitute equipment, facilities or services or business interruption, claims of third parties or cost of repair or replacing other property even if the remedy is determined to have failed of its essential purpose, or for liquidated damages, acceleration or financing costs, mobilization, overhead or damages resulting from delays of any kind whether or not the fault of ASM.* Buyer shall not be entitled to withhold payment of any amount payable under the Contract to ASM because of any disputed claim of the Buyer in respect of defective products or any other breach of the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract any monies owed by ASM.

**8. Limited Warranty.** The warranty applicable to ASM products is set forth in the attachment to these terms and conditions and runs only to the initial end use purchaser of the building in which the ASM products are installed. As further set forth therein, ASM's sole liability shall be, at its option, repair or replacement of defective product, or refund of the purchase price therefor. THIS LIMITED WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE CONDITION OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**9. Product Claims.** Buyer shall have ten days from receipt of the products by Buyer to inform ASM that the products do not conform to Seller's specifications or contain material defects; otherwise such goods shall be deemed accepted by Buyer.

**10. Disclaimers.** Any publications or other information provided by ASM with respect to handling or installation of product is for general informational purposes only. Buyer remains fully responsible for all handling after delivery to the carrier at ASM's premises and for installation, including all safety procedures. Unless otherwise agreed in a writing signed by an officer of ASM, ASM does not assure compliance with plans or specifications provided by Buyer, Buyer's agent or any third party whatsoever, and it remains the responsibility of the Buyer (or its consultants) to confirm compliance of the product with applicable local, state and national codes and other laws or regulations, and Buyer's building permit. Any advice or recommendation given by ASM or its employees or agents to the Buyer or its employees or agents as to the storage, application, installation or use of the products, which is not confirmed in writing by ASM, is followed or acted upon entirely at the Buyer's own risk, and accordingly ASM shall not be liable for any such advice or recommendation which is not so confirmed. Buyer acknowledges and agrees that any shop drawings prepared by ASM are solely for the purpose of finalizing ASM's bill of materials and are not for reliance by Buyer or any installer.

**11. Specifications and Indemnity.** The specification and design of the products (including the copyright, design right or other intellectual property in them) shall be the property of ASM or its licensors. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of ASM then the Buyer warrants that the use of those designs or specifications for the manufacture, processing assembly or supply of products shall not infringe any of the rights of any third party. If the products are to be manufactured, or any process is to be applied to the products by ASM, in accordance with a specification submitted by the Buyer, the Buyer shall indemnify ASM against all loss, damages, costs and expenses awarded against or incurred by ASM (including reasonable attorneys' fees) in connection with or paid or agreed to be paid by ASM in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from ASM's use of the Buyer's specification.

**12. Export Terms.** Where the products are supplied for export the provisions of this Section 12 shall (subject to any special terms agreed in writing between the Buyer and ASM) apply notwithstanding any other provision of these Terms and Conditions. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the products into the country of destination and the exportation from the country of manufacture and for the payment of any duties or taxes thereon. ASM shall have no liability for any claim in respect of any defect in the products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

**13. Indemnification.** To the maximum extent allowed by law, Buyer shall defend and indemnify ASM and its employees and agents against all sums, costs, and liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that ASM may incur or be obligated to pay as a result of (i) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of products; (ii) any infringement or alleged infringement of the industrial and intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the products ordered by Buyer; (iii) Buyer's violation or alleged violation of any foreign, federal, state, provincial, county, municipal or local laws or regulation, including, the laws and regulations governing product safety labeling, packaging and labor practices; and (iv) Buyer's breach of the Contract.

**14. Termination.** ASM may cancel all Contracts with Buyer, by written notice if (a) Buyer becomes insolvent or makes a general assignment for the benefit of creditors, (b) a petition is filed or proceedings are commenced against Buyer under any bankruptcy or similar laws, or (c) Buyer defaults in the performance of any of its obligations under any Contract between Buyer and ASM (including failure to pay the purchase price when due), and ASM reserves all rights with respect to same. In such event, ASM may apply any payment made by the Buyer to any Contract between the Buyer and ASM) as ASM may think fit (notwithstanding any purported application by the Buyer).

**15. Confidential Information.** The products utilize proprietary designs and information of ASM protected for ASM's benefit by patent, trade secret and/or other forms of legal protection. Buyer agrees that it will not disclose to, or use for the benefit of, anyone else, or use for its own benefit except in connection with the use of the products covered by the Contract, any developments, techniques, information, data, designs, devices, specifications, drawings, trade secrets or other information pertaining to the Contract, the goods covered thereby, or ASM's methods or manufacturing processes which have been or may be disclosed or furnished by ASM to Buyer. Unless otherwise agreed to in writing, ASM retains for itself all proprietary rights in and to all engineering designs, manufacturing details, tooling and data related to the products that it manufactures.

**16. Taxes.** Buyer agrees to provide ASM with documentary evidence of its assigned tax exemption number, if applicable, and agrees to pay all applicable sales, GST, HST, QST, VAT, revenue, use, excise, value added or other taxes or custom duties or fees arising from the sale by ASM to Buyer in addition to the purchase price.

**17. Returns.** No product returns will be accepted unless first approved in writing by ASM. All returned products must be shipped freight prepaid and collect shipments will not be accepted. If the returned products are in a first class condition (which shall be determined by ASM in its sole discretion), Buyer will be credited at the invoice amount less up to a 50% charge. If the returned products are not in a first class condition, ASM may refuse to accept the return and reship the product to Buyer on freight collect basis.

**18. Security Interest.** Buyer hereby grants to ASM a security interest in the products (together with any and all proceeds realized therefrom) as security for the performance by Buyer of all its obligations hereunder together with the right, without liability, to repossess the products with or without notice in the event of default of any such obligation. Buyer hereby consents to the filing by ASM of any financing statements from time to time by ASM, in order to perfect and protect the security interest granted to ASM hereby.

**19. Buyer-Supplied Material.** Buyer-supplied material requires prior approval/testing from ASM's Quality Control Department. Buyer-supplied material must be individually marked with a return material authorization number obtained from ASM's Customer Service Department. All shipments must be made freight prepaid. Buyer-supplied material will be incorporated at Buyer's own risk and ASM assumes no responsibility for the performance of Buyer-supplied material. Any overage of Buyer-supplied material will be scrapped unless ASM agrees otherwise at the time of order placement.

**20. Force Majeure.** ASM is not liable or responsible for delay or failure to perform any of its obligations occasioned by any causes beyond ASM's reasonable control, including labor disputes, fires, weather conditions (including hurricanes, tornadoes, snow and/or ice storms or wildfires), terrorist acts, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of or delay in supply of energy or fuel, other supplies or raw materials, delay in transportation, governmental, regulatory or legal action or act of God.

**21. Building Components.** Some persons may experience or claim allergic or medical reactions to components of various building materials. ASM does not warrant any materials used in its products to be free from any possible toxicity to users or occupants and, therefore, disclaims any liability for any problems arising therefrom.

**22. Electronic Transmission.** Buyer hereby authorizes ASM to send to Buyer or receive from Buyer assignments, invoices, credit memoranda, credit approval requests, credit approvals, and other reports or notices to be delivered to or transmitted by Buyer under this Agreement by electronic means (each, an "Electronic Transmission").

**23. Assignment; Terms and Conditions of Resale.** No assignment of the Contract is permitted without the prior written consent of ASM. Buyer acknowledges that it will be bound by these Terms and Conditions of Sale regardless of the terms and conditions of its agreement with respect to sale of this product to any third party. Buyer acknowledges that payment terms, including so called "pay when paid" terms in its sales documentation with third parties shall in no event be deemed to modify the net 30 day payment terms set forth above.

**24. Waiver.** Failure of ASM to insist upon strict performance of any of the terms on this order shall not constitute a waiver of such terms and conditions or a waiver of any default. No waiver by ASM of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**25. Severability.** In case any one or more of the provisions or parts of a provision contained herein are, for any reason, held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or part of a provision hereof or any other jurisdiction, but these Terms and Conditions will be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part will be reformed so that it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

**26. Choice of Laws; Expenses.** All orders shall be construed and the rights of the parties interpreted in accordance with the laws of South Carolina without regard to the conflicts of law thereof. The parties exclude the application of the U.N. Convention on Contracts for the International Sales of Good, the International Sale of Goods Act and the Provincial Sale of Goods legislation. ASM shall be entitled to recover from Buyer all of its costs and expenses (including legal fees) in enforcing its rights under this Agreement.

**27. Dispute Resolution.** Any dispute arising out of or in connection with the Contract including, without limitation, the existence or formation of a contract (a "Dispute") shall be referred at first instance to senior representatives of each of the parties who shall endeavor in good faith to resolve the Dispute. In the event that a Dispute cannot be resolved by such senior representatives within fourteen (14) days of referral of the Dispute to them, then either party shall be entitled to refer the Dispute to mediation in accordance with the JAMS procedures then in force. The mediation process will be commenced by service by one party on the other of a notice in writing that the issue is to be referred to mediation (the "Mediation Notice"), but in the event that the parties are unable to agree on a choice of mediator within seven (7) days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by JAMS. Each party shall bear its own costs in respect of the mediation. In the event that a Dispute remains unresolved sixty (60) days after the date of service of the Mediation Notice, then the Dispute shall be referred to and finally resolved by arbitration in accordance with the UNCITRAL Rules, which Rules are deemed to be incorporated by reference into this Section 27. Nothing herein shall prevent either party from seeking injunctive or other equitable relief in a court of law to protect or enforce its legal rights.

**28. Language.** The parties acknowledge that they have requested that these terms and conditions and all documents relating hereto be drawn up in the English language, and the English language shall prevail.

**29. Integration; Headings; Notice; Interpretation.** The parties have not relied on any statement, representation, warranty or agreement of the other party or of any other person on such party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in the Contract. These Terms and Conditions and the related Order Acknowledgement are final, complete and exclusive statement of the agreement between ASM and Buyer as to its subject matter; all prior communications between ASM and Buyer regarding the subject matter of the Contract are merged into and extinguished by this document. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the agreement. All Section headings contained in the Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of the Contract. All references to "includes," and "including" contained herein shall mean "including but not limited to." Any notice required to be given under the Contract shall be in writing. Placing an order constitutes acceptance of these Terms and Conditions even if they are not countersigned by Buyer.

## LIMITED WARRANTY

Except as stated below, ASM Modular Systems, Inc. ("ASM") warrants that the ASM products supplied by ASM to its customer ("Buyer") will be free from defects in material and workmanship under normal use and service for a period of one (1) year from the date of shipment. ASM warrants components supplied by others to ASM and incorporated into the ASM products (including, where applicable, finishes applied to the product after manufacture) only to the extent of the express warranties made by the suppliers of such components. This limited warranty extends only to the initial end use purchaser of ASM products ("End User").

This limited warranty does not cover normal wear and tear of parts or damage or loss resulting from misuse, accident, neglect, improper installation or maintenance. This limited warranty applies only with respect to ASM products that have been installed, used and maintained strictly in accordance with the instructions and recommendations contained in ASM's literature.

If End User claims that the ASM products do not conform to this limited warranty, it must, at ASM's option, either return any defective part(s) to ASM with freight or other transportation costs prepaid or allow ASM's personnel to inspect the ASM products at the site of their installation or use. If, after inspection, ASM determines that the ASM products do not conform to this limited warranty, ASM in its sole discretion will choose to (a) repair the ASM products without charge, (b) replace the ASM products without charge, or (c) pay to End User an amount equal to the purchase price paid by Buyer to ASM. The warranty period for repaired or replaced components shall be the remainder of the original warranty period. The sole and exclusive remedy for breach of warranty is the remedy of repair, replacement or refund as set forth herein. Moreover, ASM shall have no obligation under this limited warranty until any and all ASM invoices for products supplied are paid in full by Buyer.

THE WARRANTY ISSUED TO END USER HEREUNDER IS THE ONLY WARRANTY PROVIDED BY ASM AND IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES (WHETHER TO END USER OR BUYER), INCLUDING WITHOUT LIMITATION THE **WARRANTIES OF MERCHANTABILITY** OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES OF QUALITY, AND OF ALL OTHER LIABILITIES AND OBLIGATIONS, ALL OF WHICH ARE HEREBY DISCLAIMED. BUYER AND END USER WAIVE ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE. NOTWITHSTANDING ANY PRIOR STATEMENT, WRITTEN OR ORAL, ASM MAKES NO OTHER WARRANTIES REGARDING THE QUALITIES OF ITS PRODUCTS OR THE MATERIALS INCORPORATED THEREIN.

*Buyer and End User understand and agree that in no event shall ASM be liable to either of them or to any third party for any incidental, special, consequential or other similar damages arising, directly or indirectly, out of or occasioned by the purchase, use, installation, repair, replacement of the ASM products, whether such damages are based on a claim for breach of express or implied warranty, tortious conduct, or any other cause of action, whether or not foreseeable and whether or not ASM has been advised of the possibility of such damages. Under no circumstances will ASM's liability exceed the purchase price paid to by Buyer to ASM for the ASM products*

This limited warranty shall be construed and the obligations of ASM shall be interpreted in accordance with the laws of the State of South Carolina without regard to the conflicts of laws thereof. Any controversy or dispute arising out of or related to this limited warranty shall be addressed and settled in accordance with the process set forth in ASM's Terms and Conditions of Sale (U.S.) available at <https://www.asmproducts.com/en-us/support/terms-conditions-and-warranty-2> (the "Sales Terms"). This Limited Warranty is issued pursuant to, and in connection with, the Sales Terms, and, except to the extent, if any, that this Limited Warranty directly conflicts with the Sales Terms, this Limited Warranty is subject to all applicable provisions of the Sales Terms.