



33900 Doreka * Fraser, MI 48026 * Phone (586) 585-5250
www.ameristeel.com

TERMS and CONDITIONS of SALE

PLEASE REVIEW THESE TERMS AND CONDITIONS OF SALE CAREFULLY. BY ORDERING OR ACCEPTING ANY GOODS OR SERVICES DESCRIBED IN THESE TERMS AND CONDITIONS OF SALE, INCLUDING ANY ANCILLARY INSTRUMENTS OR DOCUMENTS REFERENCED IN THESE TERMS AND CONDITIONS OF SALE, OR MAKING ANY PAYMENT PURSUANT TO THESE TERMS AND CONDITIONS OF SALE, INCLUDING ANY INVOICE OR PURCHASE ORDER RELATING TO THESE TERMS AND CONDITIONS OF SALE, YOU AFFIRM THAT YOU ARE ABLE AND LEGALLY COMPETENT AND ACCEPT AND AGREE TO THESE TERMS AND CONDITIONS OF SALE. IF YOU DO NOT AGREE TO ANY OF THESE TERMS, THEN PLEASE DO NOT ORDER OR ACCEPT ANY GOODS OR SERVICES OR MAKE ANY PAYMENT FOR SUCH GOODS OR SERVICES.

These Terms and Conditions of Sale ("Terms and Conditions") and the Ancillary Instruments (each, as amended, restated, supplemented or modified from time to time, collectively, the "Agreement"), constitute a written agreement between Ameristeel, Inc., a Michigan corporation, and its affiliates (collectively, "ASI or "we" or "us" or "our"), and you. We recommend that you print a copy of these Terms and Conditions for your records.

Although ASI may attempt to notify you when major changes are made to these Terms and Conditions, you should periodically review the most current version, available at <https://ameristeel.com/terms-conditions>. ASI may, in its sole discretion, modify or revise these Terms and Conditions, legal notices and other policies at any time, and you agree to be bound by such modifications or revisions. Nothing in these Terms and Conditions shall be deemed to confer any third-party rights or benefits.

1. **Exclusive Agreement.** This Agreement exclusively governs the goods and services ("Goods and Services") to be provided by ASI to you. The Goods and Services may be described further in any purchase order, invoice, statement of work or other written instrument prepared by ASI arising out of, relating or attributable to these Terms and Conditions (each, as amended, restated, supplemented or modified from time to time, collectively, the "Ancillary Instruments"). You acknowledge and agree that any additional or conflicting terms or conditions contained in forms or communications prepared by you, or otherwise proposed by you in this Agreement, including any of the Ancillary Instruments, are (a) expressly and automatically rejected by ASI without any further action by ASI, (b) of no force or effect and (c) not binding upon ASI in any manner whatsoever with respect to the sale or shipment of Goods and Services.

2. Fees and Payment.

a. Fees. You shall pay to ASI the applicable fees for the Goods and Services as set forth in the Ancillary Instruments. All payments shall be in lawful money of the United States of America, in immediately available funds. You will be charged a monthly service fee in the amount of 1.5% of any unpaid balances past thirty (30) days. You acknowledge and agree that ASI's fees are subject to change from time to time, in which case ASI shall use commercially reasonable efforts to notify you in advance of any such fee change. In addition, certain additional fees, costs and expenses may be charged to your account/method of payment at the then prevailing ASI rate at the time of performance, including any and all fees, costs and expenses relating to ASI's unforeseen additional work or services requested by you and/or required to be performed by ASI during the course of providing the Goods and Services as set forth in the Ancillary Instruments, after hours and weekend support, onsite support, and post-engagement support, work, materials and/or services not identified in the Ancillary Instruments (collectively, "Additional Work"), together with any and all of ASI's out of pocket costs incurred in conjunction with the Additional Work. For purposes of this Agreement, the term "Goods and Services" shall be construed to include any "Additional Work", unless the context requires otherwise.

b. Payment. All payment terms and conditions are set forth in the Ancillary Instruments. This Agreement is subject at all times to ASI's credit approval and ASI reserves the right at any time prior to providing the Goods and Services to modify the payment terms originally specified in any Ancillary Instrument to assure prompt payment for the Goods and Services ordered. In the event that you desire to make payment by credit card, you acknowledge and agree that ASI will not begin to perform the Goods and Services described in the Ancillary Instrument until you have authorized ASI to charge said credit card pursuant to the attached Authorization and Approval to Charge Credit Card or other written authorization. In addition, if you initialize a charge back with your credit card issuer to reverse payment without ASI's prior written consent, then you acknowledge and agree that you shall pay ASI a charge back fee in the amount of \$150.00 USD per charge back occurrence.

c. Taxes. All prices set forth in the Ancillary Instruments are exclusive of taxes. All taxes applicable to any order for Goods and Services placed under this Agreement, including without limitation, Michigan or other applicable sales, use or similar taxes, are additional and to the extent legally permissible shall be paid by you.

3. Term; Termination and Suspension.

a. This Agreement shall commence on the last execution date of the Ancillary Instrument and shall continue in full force and effect for as long as ASI provides the Goods and Services and/or Additional Work to you ("Term"), unless terminated earlier as provided below.

b. If you fail to make payment in full within the time period specified in any Ancillary Instrument, then such failure shall be deemed a material breach of this Agreement and shall permit ASI, at its sole and absolute discretion, to either terminate this Agreement or suspend any further Goods and Services.

c. ASI shall have the unrestricted right to suspend, withhold or delay its performance or delivery of Goods and Services in the event of the occurrence of any of the following or any other comparable events, in which event ASI shall have no liability for any losses or damages claimed by you: (i) your insolvency or commission of an act of bankruptcy; (ii) commencement of proceedings by, for or against you under any law relating to bankruptcy or the relief of debtors; (iii) the appointment of a receiver or trustee for you; (iv) the execution by you of an assignment for the benefit of creditors; and (v) the determination by ASI, in its sole and absolute judgment, that your financial condition is such as to endanger your performance under this Agreement.

d. In the event of any termination, suspension or expiration of this Agreement, you shall pay to ASI in immediately available funds any and all fees, costs and expenses for Goods and Services and any Additional Work provided by ASI up to and including the date of termination, suspension or expiration. Sections 3, 6, 7, 8, 9, 11, 12, 13, 14 and 15 shall survive any termination, suspension or expiration of this Agreement in accordance with their respective terms.

4. **Shipment.** Unless otherwise specifically agreed to in an Ancillary Instrument, (a) all prices are for Goods and Services packed for domestic shipment and for delivery F.O.B. your business address, (b) all risk of loss or damage to the Goods and Services shall be on you from the point of shipment, and (c) all freight and shipping costs and expenses are your responsibility.

5. **Inspection and Claims.** You must inspect all Goods and Services upon receipt. Any and all claims, whether known or unknown, matured or unmatured, foreseen or unforeseen, regarding the Goods and Services, including in connection with any return, rejection or defect of Goods and Services (collectively, "Claim"), are subject to each of the following requirements (each, a "Claim Requirement"): (a) you must provide written notice of all Claims (including without limitation for a warranty defect, rust or oxidation) to ASI within thirty (30) days after receipt of the Goods and Services; (b) all Goods and Services must be intact, properly protected by you and in the form and condition originally shipped to you. Any damage to Goods and Services identified at the time of receipt must be fully documented, including detailed processing reports, photographs and/or samples, and clearly stated on all copies of the shipping company; (c) ASI or its authorized Representatives shall be permitted to inspect the Goods and Services subject to a Claim; and (d) all returns of Goods and Services must be authorized in writing by ASI. Materials will not be accepted by ASI without our written authorization. Failure to satisfy any of the Claim Requirements shall constitute acceptance by you of the Goods and Services and a waiver of any and all Claims. ASI will not accept or be liable for any labor expenses or charges or any other expenses, charges or costs incurred by you in connection with a Claim. Notwithstanding the foregoing, water damage claims should be made to the shipping company that shipped you the Goods and Services.

6. **Indemnification.** You shall indemnify, defend and hold harmless ASI and ASI's subsidiaries and affiliates, and their respective members, shareholders, managers, directors, officers, employees, attorneys, agents and other representatives (collectively, "Representatives"), from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost and expense (including, without limitation, reasonable attorneys' fees and expenses reasonably incurred in defending against or prosecuting any litigation or claim, action, suit, proceeding or demand), of any kind or character, arising out of or in any manner relating to any alleged or actual act or omission of you involving: (a) infringement by you of a copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any third party; (b) violation by you of any and all applicable federal, state and local laws, rules and regulations; and (c) breach of any covenant, representation or warranty set forth in this Agreement, including the Ancillary Instruments.

7. **Limited Warranty.** ASI warrants that the Goods and Services shall comply with any written specifications set forth on the Ancillary Instruments. All Goods and Services, including those produced to meet an exact specification, dimension, weight or straightness, are subject to (a) the producer's mill tolerances and variations in surface and internal conditions in respect to dimension, weight, straightness, section composition and mechanical or physical properties, and to normal variations in surface and internal conditions and in quality; (b) deviations from tolerance and variations consistent with practical testing and inspection methods; and (c) regular steel industry mill practice on over and under shipment. **THE FOREGOING IS THE ONLY WARRANTY GIVEN BY ASI. TO THE FULLEST EXTENT UNDER APPLICABLE LAW, THE GOODS AND SERVICES ARE OTHERWISE PROVIDED "AS IS" BY ASI TO YOU, AND ASI DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL OTHER EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS OR WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.**

8. Limitation of Remedy. Your exclusive remedies with respect to any proper Claim in connection with Goods and Services shall be limited to, at ASI's sole option, (a) replacement of any defective or non-conforming Goods and Services, (b) a credit to your account for the fees actually paid by you relating to such defective or non-conforming Goods and Services, or (c) a refund to you of the fees actually paid by you for any defective or non-conforming Goods and Services.

9. Limitation of Liability. Under no circumstances shall ASI's aggregate liability under this Agreement to you exceed the amount of fees actually paid by you for the Goods and Services and any Additional Work. Under no circumstances shall ASI be liable to you for any indirect, incidental, punitive, special or consequential damages of any type, including without limitation lost profits, exemplary damages, loss due to business interruption or lost data, arising out of or relating to this Agreement, the Goods and Services or any Additional Work, even if a Party has been advised by the other Party of the damage and even if a Party asserts or establishes a failure of essential purpose of any limited remedy provided in this Agreement.

10. Independent Contractor; Subcontractors and Third Party Service Providers. Each party hereto (each, a "Party", and collectively, the "Parties") acknowledges and agrees that the relationship between you and ASI is that of independent contractor, and that each Party has no right or authority to assume or create any expenses, liabilities or obligations of any kind, whether express or implied, on behalf of the other Party except as provided in this Agreement. Nothing in this Agreement shall be construed to create a partnership, joint venture, agency or employment relationship between the Parties. You acknowledge and agree that ASI may perform Goods and Services and any Additional Work under this Agreement through one or more subcontractors.

11. No Interference with Employment Relationships. During the Term and for a period of one (1) year thereafter, without the prior approval of ASI, you shall not solicit for employment, directly or indirectly, or employ, any current employees or former employees of ASI with whom you have had more than incidental contact in connection with this Agreement. If an employee is terminated or otherwise leaves the employment of ASI, the prohibition on solicitation and hiring shall extend one (1) year after such termination. You acknowledge and agree that the restrictions in this Section 11 are reasonable and fair in all respects, including in both duration and geographic scope.

12. Intellectual Property. You shall not be permitted to use ASI's copyrights, patents, trademarks and trade names, or other proprietary or intellectual property (collectively, "Intellectual Property") in connection with this Agreement or otherwise. All Intellectual Property of ASI shall be and remain forever the sole and exclusive property of ASI. ASI represents and warrants that it has all right, power and authority to use its Intellectual Property, if any, in connection with performing its obligations under this Agreement.

13. Confidential Information.

a. Definition. The term "Confidential Information" as used herein shall collectively mean any and all information or materials disclosed or provided by ASI or its Representatives in writing or otherwise either prior to or after execution of this Agreement, concerning any confidential, proprietary, business or technical information or trade secrets, including without limitation any aspect of ASI's business, business plan or affairs, and any and all other information, materials and records of ASI relating to its business that have not been made available to the general public, whether or not marked or designated as "Confidential" and/or "Proprietary" or the like, in any form, including electronic or optical data storage and retrieval mechanisms regardless of whether any such information is protected by applicable trade secret or similar laws. "Confidential Information" also includes any notes, analyses, compilations, studies or other material or documents prepared by you or your representatives which contain, reflect or are based, in whole or in part, on ASI's Confidential Information. In addition, "Confidential Information" shall include all of the terms and conditions of this Agreement, including any Ancillary Instruments.

b. Non-Disclosure Obligations. You shall not, at any time, disclose ASI's Confidential Information to any third party without the prior written consent of ASI and shall restrict dissemination of ASI's Confidential Information only to your representatives who clearly have a need to know the Confidential Information in conjunction with the purposes described in this Agreement. You agree to protect ASI's Confidential Information by using the same degree of care as you would use to protect your own information of like importance, but in no case less than reasonable care. Any use of Confidential Information shall be solely for the purpose authorized above. You shall be and remain fully liable and responsible for your representatives' unauthorized disclosure or use of ASI's Confidential Information. You agree not to reverse engineer, disassemble or otherwise restructure and/or copy or in any way recreate in whole or in part any of ASI's Confidential Information.

c. Exceptions to Confidential Information. You shall have no obligation with respect to information which: (i) was rightfully in possession of or known to you without any obligation of confidentiality prior to receiving it from ASI, as evidenced by your records; (ii) is or becomes part of the public domain without breach of this Agreement by you; (iii) becomes known or available to you from a source other than ASI with the legal right to use and disclose such information; (iv) is independently developed by you without use of ASI's Confidential Information; or (v) is disclosed by you pursuant to a valid order issued by a court or government agency; provided, however, that you provide ASI: (A) prior written notice of such obligation; and (B) the opportunity to oppose such disclosure or obtain a protective order.

d. Return or Destruction of Confidential Information. Upon the earlier of the termination or expiration of this Agreement, or ASI's request for any reason, you shall: (i) cease using the Confidential Information; (ii) promptly return the Confidential Information and all copies, notes or extracts thereof to ASI within seven (7) days of receipt of demand; and/or (iii) destroy all such Confidential Information, including copies thereof, and furnish ASI with written certification of such destruction. Notwithstanding the foregoing, you shall have no obligation to remove or destroy files or data resident in unallocated computer space, back-up or storage. Your legal counsel may retain one copy of the Confidential Information for use solely as a record of the disclosure.

14. Equitable Relief. You acknowledge and agree that the restrictions contained in this Agreement are reasonable and necessary to protect the legitimate interests of ASI and its affiliates and that ASI would not have entered into this Agreement in the absence of such restrictions. You further acknowledge and agree that any money damages may be both incalculable and an insufficient remedy for any breach of this Agreement by you, and that any such breach would cause irreparable harm to ASI. Accordingly, in the event of any breach or threatened breach of this Agreement, ASI, in addition to other remedies at law or in equity that it may have, shall be entitled to seek equitable relief, including injunctive relief and specific performance.

15. Miscellaneous.

a. Assignment. This Agreement, including the Ancillary Instruments, shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that this Agreement may not be assigned by you in whole or in part, including by operation of law, in a merger or stock or asset sale, without ASI's prior written consent. Any attempted assignment in violation of this Section 15(a) shall be deemed null and void and of no force or effect.

b. Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. No third-party beneficiaries are contemplated or created under operation of this Agreement.

c. Force Majeure. ASI shall not be deemed in default of this Agreement to the extent that performance of its obligations under this Agreement are delayed or prevented solely by supervening conditions or causes beyond ASI's reasonable control, including without limitation, acts of God, fires, natural disasters, war, terrorism, strikes, power outages, labor disputes, equipment failure, shortages in shipping, power, labor or material, or government demands or requirements (each, a "Force Majeure"). ASI shall give you written notice of its discovery of a Force Majeure that prevents the performance of its obligations under this Agreement.

d. Waiver. No waiver of any term or condition herein by ASI shall be valid unless in writing and signed by ASI, and any such waiver shall be limited to the specific situation for which it is given. No failure or delay by ASI in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right or power hereunder.

e. Governing Law; Venue; Waiver of Jury Trial. This Agreement, including the Ancillary Instruments, shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to any conflicts of law principles. The Parties agree to submit all disputes, controversies or claims between the Parties arising out of or in connection with this Agreement, including the Ancillary Instruments, in either any state court of competent jurisdiction located closest to ASI's principal office in Michigan, or in the United States District Court for the Eastern District of Michigan, and the Parties waive any objection to submitting to the personal jurisdiction and venue therein. You expressly (i) waive trial by jury with respect to any disputes, controversies or claims that you may assert against ASI arising out of or in connection with the terms of this Agreement, including the Ancillary Instruments, and (ii) agree that you shall commence any and all disputes, controversies or claims that you may have or may assert against ASI within thirty (30) days of the accrual of any such dispute, controversy or claim, or such dispute, controversy or claim is expressly waived.

f. Attorney Fees. In the event legal action is brought by ASI to enforce or interpret the terms of this Agreement, including any Ancillary Instrument, ASI shall be entitled to recover, in addition to any other relief, its reasonable attorneys' fees, costs and disbursements from you.

g. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement, including the Ancillary Instruments, shall be in writing and shall be deemed to have been given (i) when delivered by hand; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (iv) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the address of a Party specified on the Ancillary Instrument, or to such other address as either Party may from time to time duly specify by notice given to the other Party in the manner specified above. If no address for ASI is specified on the Ancillary Instrument, then such communications must be sent to the address of ASI specified on the header of this Agreement.

h. Severability. Whenever possible, each provision of this Agreement, including the Ancillary Instruments, shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Agreement, including the Ancillary Instruments, shall be held to be void or unenforceable by any competent court or tribunal, the remaining provisions of this Agreement, including the Ancillary Instruments, shall continue in full force and effect.

i. Entire Agreement; Counterparts. This Agreement, including the Ancillary Instruments and any other exhibits, schedules or documents referenced therein, constitute the entire agreement and understanding between the Parties regarding the subject matter thereof, supersede all prior or contemporaneous agreements or understandings between the Parties, whether written or oral, regarding the subject matter thereof, and may be amended, supplemented or modified only in writing signed by the Parties. This Agreement and any Ancillary Instruments or agreements entered into in connection with this Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instrument. Any counterpart, to the extent delivered by means of a facsimile machine or by pdf, .tif, .gif, .peg or similar attachment to electronic mail, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as an original signed version delivered in person. This Agreement shall become effective when each Party shall have received a counterpart signed by the other Parties.