



**General Terms and Conditions of Sale**  
for the Supply of Goods and Services to Merchants (Customers)  
of ASM Sensors, Inc.

**1. General**

- 1.1 The following Terms and Conditions ("Terms") are applicable to all sales of goods, services or licenses made and all information and advice provided by ASM Sensors, Inc. (the "Company"), a Delaware corporation with offices located at 650 W. Grand Ave., Suite 205, Elmhurst, Illinois to customers (the "Customer") and the acceptance of any order is expressly conditioned upon the Customer's consent to these Terms. No interlineations, deletions, modifications or amendments to these Terms shall be binding on the Company unless agreed to and accepted in writing.
- 1.2 All sales are subject to written confirmation by the Company. Receipt by the Customer of Company's acknowledgment of an order without prompt written objection thereto shall constitute acceptance by the Customer of these Terms.
- 1.3 Once these Terms are in effect with the customer based on the initial sale or services provided to the Customer by the Company, these Terms shall also apply to all further business relations between the Customer and the Company, unless agreed otherwise in writing. Terms and conditions of the Customer shall only be applicable if the Company expressly recognizes such in writing. The Company's silence about variant terms and conditions shall not be considered recognition or approval of such terms, as well as with respect to future contracts. These Terms shall apply in lieu of any terms and conditions of the Customer's purchase order or other purchasing document, even if, in accordance with the Customer's purchase order terms and conditions, the acceptance of an order constitutes unconditional recognition of such Customer's terms and conditions. The Customer recognizes by accepting the Company's order confirmation that it waives any legal objections derived from its terms and conditions.

**2. Information; Advice; Features of Goods**

- 2.1 The weights, dimensions, capacities, performance ratings and other data on the Company's catalogs, prospectus, circulars, advertisements, websites, price lists and instructions sheets are mentioned only as general information. The values specified in this regard should be viewed as average values. All data about the Company's products, particularly the depictions, drawings, measurements and performance values and other technical data contained in its offers and printed material are average values and should be considered as approximations. Such data is only approximate and shall not bind the Company.
- 2.2 Any reference to standards, similar technical provisions and technical specifications, descriptions and depictions of the delivered object in the Company's offers and prospectuses and advertising shall only represent specifications of features if the Company has expressly declared the condition to be a feature of the goods in the Quote or Order Confirmation or other documentation regarding the individual sale with the Customer; otherwise, such shall constitute non-binding general performance specifications.

**3. Samples, Models**

The features of finished samples or models shall only form components of a contract if expressly agreed in writing. The Customer shall not sell or transfer samples or models.

**4. Quotations; Conclusion of Contract; Change Orders; Acceptance**

- 4.1 Quotations, offers or tenders are noncommittal in nature. No contract shall arise until a written acknowledgment from the Company accepting the Customer's order, is sent by the Company to the Customer. Because no contract is formed until the Company acknowledges the Customer's order, these Terms shall supersede any and all terms of the Customer. The Company will be entitled to adjust agreed prices on the basis of the average

change in the cost price of the goods or services to be delivered and/or activities to be performed by the Company or its suppliers. The adjustment of agreed prices and rates will apply as of the beginning of the first month after the Customer has been notified in writing of the adjustment. The Company's order confirmation shall determine the content of the delivery contract. In the case of immediate delivery, the Company's confirmation may be replaced by an invoice.

- 4.2 Any change requests or change orders by the Customer may be taken into account after the order has been issued only if such changes have been expressly agreed upon in writing. If the Company meets change requests by the Customer after an order has been issued, the Customer shall pay the Company any additional costs incurred for the changes and pay a markup of 20% on the margin of 30% of the net delivery price for the efforts on the Company's part associated with the change order.
- 4.3 The Customer shall instruct the Company in writing prior to the Company's Order Confirmation about any special requirements related to the goods. If no such special requirements are specified, the Company shall assume that no special requirements exist and shall not be obligated to modify the goods if the Customer presents special requirements to the Company after the Order Confirmation has been executed by the parties.
- 4.4 The Company shall be entitled to deliver up to 5% more or less units compared to the ordered volume.
- 4.5 If the acceptance or shipment of the goods is delayed due to reasons for which the Customer is responsible, the Company shall be entitled to demand immediate payment of the purchase price or rescind the contract or to refuse performance and demand compensation in lieu of the entire performance after written notice by the Company of such demand and the expiration of a 14-day subsequent grace period.

**5. Delivery; Delivery Period; Default in Delivery**

- 5.1 Binding delivery dates and periods must be agreed expressly in writing. The Company shall make its best efforts to meet non-binding or approximate (about, approx., etc.) delivery dates or periods.
- 5.2 Delivery periods shall commence upon receipt of the Company's order confirmation from the Customer, though not before all details for executing the order have been clarified and all other conditions to be fulfilled by the Customer have occurred. If the Customer has requested changes after the order has been issued, a new delivery period shall commence upon the Company's confirmation of the change. The Customer shall make the Company aware when issuing the order of any transport instructions to be observed.
- 5.3 Deliveries may be made prior to the expiration of the delivery period. The day that the Customer is notified of delivery readiness shall be considered the delivery day; otherwise, the day the goods are shipped shall be considered the delivery day.
- 5.4 If a specific shipping date is specified in the order or later agreed to by the Company, then the Company shall not be liable for any delays in filling this order caused by accidents to machinery, differences with employees, strikes, labor shortage, fire, floods, supplier delays in filling this required by an instrumentality of the United States Government or any government, delays in the transportation, restriction imposed by any governmental regulation, whether valid or invalid, or cause beyond the control of the Company, or without the sole fault or negligence of the Company. Under no circumstances shall the Customer or Customer's buyer be entitled to any damages for the Company's failure to ship on

time, and the Customer agrees to indemnify, defend and hold the Company harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on the Company's failure to deliver timely.

- 5.5 If the Customer does not pick up or refuses to receive the goods at the date specified in the order or later agreed to by the Company, the delivery of the goods shall nevertheless be deemed accepted by the Customer who shall therefore pay for the goods delivered. The storage of the goods arranged by the Company will be at the risks and expenses of the Customer. The Company shall further be entitled, to the exclusion of any other remedy for the Customer's failure to take the products, to recover any expenses properly incurred in performing the contract and not covered by payments received for the goods delivered. Damage compensation claims due to a breach of duty for whatever reason shall only exist in accordance with the provisions of Section 11. If the Company fails to render performance prior to a date determined in the contract or within a contractually determined period, the Customer's sole remedy is to rescind the contract, provided the Customer has stipulated in the contract that time is of the essence.

#### 6. Force Majeure

- 6.1 If the Company does not receive deliveries or performances from its subcontractors or does not receive such properly or in the time specified due to reasons for which it is not responsible or in the event of Force Majeure, the Company shall inform the Customer thereof in writing. In such event, the Company shall be entitled to postpone the delivery for the period of the hindrance or to rescind the still unperformed portion of the contract in whole or in part, provided the Company has met the above duty to provide information. Force Majeure shall exist in the event of a strike, lock-out, government intervention, energy or raw material shortage, transportation bottleneck through no fault of the Company's, operational hindrances through no fault of the Company's, e.g. due to fire, water or damage to machinery and all other hindrances, which, upon objective consideration, have not been negligently caused by the Company.
- 6.2 If the Company is temporarily unable to perform the contract because of Force Majeure, it will be entitled to suspend performance of the contract for as long as the Force Majeure lasts. If the Company is permanently unable to perform any of its obligations to the Customer because of Force Majeure, it will be entitled to cancel the specific order with immediate defect and without any damages whatsoever. The Customer agrees to indemnify, defend and hold the Company harmless against any claims made by third parties based on whole or in part on the Company's inability to perform because of Force Majeure.

#### 7. Shipping and Passage of Risk

- 7.1 Unless agreed otherwise in writing, we shall ship the goods uninsured, at the risk and expense of the customer. Unless otherwise specified by the parties in writing, the goods are to be delivered "ex works", at the Company's place of business. The method and agency of transportation and routing will be designated by the Company, unless otherwise agreed to in writing. In the event the Customer requests alternative shipment or routing, extra packing, shipping and transportation charges thereby resulting will be for the Customer's account. The Company is not responsible for any damage in shipment.
- 7.2 In keeping with shipment of the goods "ex works", the risk of accidental loss or deterioration shall pass to the Customer, shipping company, freight agent or other enterprises commissioned to perform the shipment upon the delivery of the goods to be supplied, though at the latest upon leaving the Company's factory, warehouse or branch.
- 7.3 If the shipment is delayed due to the fact that the Company has availed itself of its retention right as a consequence of a whole or partial delay in payment or for any other reason for which the Customer is responsible, the risk shall pass to the Customer at the latest from the date of the notice of delivery readiness.

#### 8. Inspection; Returns; Warranty

- 8.1 Unless the Company receives a written complaint with full particulars from the Customer regarding any defective goods or

services or other complaints within twelve (12) days from the date the goods or services are delivered, the goods shall be deemed to have been delivered in good condition and that the delivery is accepted. Acceptance of the returned goods does not imply acknowledgment by the Company of the reason for the return. Goods returned by the Customer to the Company will remain at the Customer's risk and the Customer will owe the agreed amounts until the Company has credited the Customer for these goods. The goods accepted by the Customer from the Company, which the Customer has put fully or partly into use, treated, processed or delivered to others will be considered to conform to the contract. In the event of defects identifiable upon delivery, complaints must also be made to the transport company, who shall be instructed to record the defects. If mistakes in the number of units or weight are detectable in accordance with the aforementioned inspection duties upon delivery, the Customer must complain to the transport company about such defects upon receipt of the goods and have the complaint confirmed.

- 8.2 Subject to any separate document regarding the entire and complete Limited Warranty offered by the Company, the Company warrants, for twelve (12) months after delivery, unless indicated elsewhere to the contrary, that the goods, services and programs covered by these Terms are produced according to usual practices, customs, standards, specifications and tolerances of trade prevailing in the country of origin at the time of production and shall be free from defects in design, material, workmanship and shall conform to the Company's specifications. **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES, AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.** Goods showing only minor defects, not affecting the function of the goods or program shall be accepted by the Customer and shall not give rise to any claim against the Company. All claims of damages of any kind during delivery are barred unless reported in writing by the Customer to the Company, with full disclosure of particulars within twelve (12) days after delivery as defined herein.
- 8.3 Where a defect is discovered within twelve (12) months of delivery from the Company, the Customer shall be entitled, at the Company's option, to either repair or replacement of the defective product. **THE COMPANY SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, DIRECT OR INDIRECT COSTS OR LOSSES UNDER ANY CIRCUMSTANCES.** The Company will not replace where the defect is the result of use or handling in a manner, circumstances, or for purposes other than those that have been approved or instructed by the Company.
- 8.4 In the event the Customer has licensed software programs from the Company, any and all warranties related to such shall be null and void thirty (30) days after the Company publicizes generally the existence of anew release of such software program.
- 8.5 The maximum liability of the Company under any circumstances shall be the price actually paid by the Customer to the Company for the good, service or program that is proven to be defective.

#### 9. Prices; Payment

- 9.1 All prices shall in principle be in US Dollars "ex works" or warehouse and do not include packing, freight or any markup for reduced volume or the applicable value-added tax to be borne by the Customer or any costs for collateral (e.g. performance guarantees) to be provided by the Customer.
- 9.2 Unless agreed otherwise, goods, services or performances not included in the Order Confirmation shall be executed based on the Company's generally applicable price lists.
- 9.3 Quotations are valid for thirty (30) days unless otherwise stated.
- 9.4 The Company's invoices shall be payable (without any deduction):  
- in the case of delivery of goods, in advance by cashier's check, money order, or by cash on delivery. For Buyer's who qualify for credit, net thirty (30) days from date of invoice irrespective of the date of receipt of the goods.  
- in the case of work and/or services, within 10 days after the invoice date.

With respect to invoice amounts above US\$5,000.00, the Company shall be entitled either to demand the provision, free of costs and charges, of an irrevocable standard letter of credit from a major international bank with registered office in the USA, payable in the USA.

- 9.5 The Customer shall also be in default in payment without need of warranty:
- in the case of delivered goods, within 31 days after delivery;
  - in the case of rendered services or work, within 11 days after full performance.

- 9.6 Upon the occurrence of default, default interest shall be computed at a rate of 8% over the respective base interest rate, or the maximum allowed by law. The date the Company receives the money or the date of the credit entry onto the Company's bank account shall be considered as the payment date. The Company reserves the right to claim any other damages against the Customer. Furthermore, default in the fulfillment of an account receivable shall cause all further accounts receivable from the Customer to become due immediately.

- 9.7 If terms and conditions of payment are not observed or circumstances become known or identifiable, or facts which already existed on the closing date hereof but which were not known to the Company or need not have been known to the Company allowing justified doubt about the creditworthiness of the Customer after a due assessment of all circumstances, the Company shall be entitled, irrespective of any further rights provided by law, to discontinue further work on ongoing orders and the delivery and to demand advance payments for still outstanding deliveries or the provision of collateral satisfactory to the Company and, after a grace period of fourteen (14) days to provide such collateral has lapsed unsuccessfully, to rescind the contract, without prejudice to any further rights provided by law. The Customer shall be obligated to compensate all damage arising through the non-performance of the contract.

- 9.8 If payments are deferred and rendered later as agreed, interest shall be owed for the deferment period at a rate of 8% above the base interest rate, or the maximum allowed by law, applicable on the date when the deferment was arranged, without any need to declare the default.

#### 10. Security Interest

- 10.1 In order to protect and secure payment of all debts due and owing from the Customer and until the Company has been paid in full, the Customer hereby grants to the Company a security interest in the Products, and all proceeds and all accounts receivables resulting from the sale of the products. In connection therewith, Customer hereby authorizes the Company to take all necessary steps to file such financing statements and exhibits with the proper authorities.

- 10.2 Until the Customer has paid for the products in full, Customer shall not pledge, mortgage, encumber, or create or suffer to exist a security interest in the products in favor of any person other than the Company unless written approval of such other security interest is given by the Company. Additionally, the Customer agrees to keep the products insured to their full value until payment is received by the Company. In the event the Customer sells the goods to a third party before payment in full is received by the Company, the Customer agrees to secure its security interest in the goods at the time of sale to its customer in order to protect the Company's interests to the greatest extent possible.

#### 11. Exclusion and Limitation of Liability

- 11.1 THE COMPANY SHALL HAVE NO LIABILITY FOR ANY LOSSES, COSTS, EXPENSES, LIABILITIES AND DAMAGES (INCLUDING BUT WITHOUT LIMITATION TO LOSS OF USE OR PROFITS, DAMAGE TO PERSONS OR PROPERTY, ALL LIABILITIES OF PURCHASER TO ITS CUSTOMERS OR THIRD PERSONS, OR ALL OTHER SPECIAL OR CONSEQUENTIAL DAMAGES) WHETHER DIRECT OR INDIRECT, AND WHETHER OR NOT RESULTING FROM, OR CONTRIBUTED TO BY THE DEFAULT OR NEGLIGENCE OF THE COMPANY, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS, WHICH MIGHT BE CLAIMED AS THE RESULT OF THE USE OR FAILURE OF THE GOODS

DELIVERED OR SERVICES PERFORMED, WHETHER ARISING IN CONTRACT OR NOT. THE COMPANY MAKES NO FURTHER WARRANTY, EITHER EXPRESS OR IMPLIED OR BY TRADE USAGE IN CONNECTION WITH THE DESIGN, SALE OR USE OF ANY OF THE GOODS FURNISHED OR SERVICES PERFORMED HEREUNDER.

#### 12. Jurisdiction; Applicable Law

- 12.1 These Terms and all transactions between the Company and the Customer are governed by the laws of Illinois.
- 12.2 Any controversy or claim between the Company and the Customer or any controversy or claim otherwise arising out of or relating to the Terms and any agreement subject to these Terms, shall be settled by binding Arbitration in Chicago, Illinois, according to the rules of the American Arbitration Association.

#### 13. Intellectual Property Rights

- 13.1 All intellectual property rights to, ownership of and interest in all goods, trademarks, trade names, logos, distinctive marks, designs, and other materials created and/or made available by the Company hereunder or within the framework of the relationship between the Customer and the Company are vested exclusively in the Company. The Customer shall not reproduce, transfer, grant, assign, license or use the goods, distinctive marks, and designs and other materials created and/or made available by the Company and/or otherwise act as maker of and/or party entitled to such rights, except in accordance with these Terms.
- 13.2 The Customer will not be permitted to remove or alter indications concerning intellectual property rights and concerning the confidential nature of information from goods, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by the Company and goods delivered.
- 13.3 The Customer will not be entitled to alter - or have altered, - modify, have modified, adapted or otherwise reconfigured, the goods, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by the Company.
- 13.4 The Customer will indemnify the Company against claims of third parties based on the allegation that by using materials made available by the Customer, the Company has infringed the intellectual property rights of third parties.
- 13.5 If a third party claims against the Customer due to any alleged infringement of the Company's intellectual property rights as a result of goods delivered by the Company and used as agreed, the Company may, at the Company's choice and at own cost, either obtain a license to modify the delivered goods so that the intellectual property right is not infringed upon, or may replace the goods for non-infringing goods.
- 13.6 The above obligations may only exist if the Customer has informed the Company in writing of the claims asserted by third parties and the Company retains the right to undertake all defensive measures and settlement negotiations.
- 13.7 The Company shall not defend the Customer from claims of infringement if the Customer is responsible for the infringement of the intellectual property right. In addition, the Company shall not defend the Customer from third party claims of infringement, if the infringement of the intellectual property right is caused by specifications of the Customer or by an application not foreseeable by the Company or because the delivered good is changed by the Customer or implemented together with products not delivered by the Company.

#### 14. Initiation of Insolvency or Composition Proceedings; Suspension of Payments

- 14.1 Any petition for insolvency or bankruptcy proceeding or comparable proceedings filed by the Customer or any suspension of payments by the Customer not based on retention or other rights shall entitle the Company to rescind the contract at any time or to make the delivery of the purchased goods or services contingent on the prior fulfillment of the payment obligation. If the purchased goods or services has

already been delivered, the purchase price shall be due immediately in the aforementioned cases.

- 14.2 The provisions pursuant to Section 14.1 shall also apply if the Company has accepted checks or bills of exchange towards payment and the drawee or issuer files a petition for insolvency or bankruptcy proceeding or comparable proceedings and/or suspends its payments.

**15. Severability**

- 15.1 In the event any provisions hereof are invalid, the remaining provisions shall remain fully effective. That provision which most closely approximates in the invalid provision, as permitted by law shall apply in lieu of any invalid provisions, without need of further action.

**16. Entire Agreement**

- 16.1 These Terms constitute the sole terms and conditions of the contract between the Customer and the Company, and applies to any information or advice that the Company has provided to the Customer. No other terms, conditions, or understanding, whether oral or written, shall be binding upon the Company, unless hereafter made in writing and signed by the Company's authorized representative and, in the case of printed matter, also initialed by such representative next to such printed term or condition.