

ASM-air.com General Terms of Service

Last Updated: 1/4/2018

1. Description of ASM-air.com and These Terms of Service

Welcome to ASM-air.com. Krankenwerks, Inc. ("All Systems Mechanical", "ASM", "ASM-air", "us", "we", "our") provides its products and services subject to these Terms of Service ("Terms"). By using ASM-air.com, you agree to the following Terms. These Terms may be updated by us from time to time, and we encourage you to revisit this page often and review the Terms. In addition to these Terms, when using particular ASM-air.com owned or operated services, you may also be subject to any additional posted guidelines applicable to such services.

ASM-air.com provides you with access to many valuable resources, including All Systems Mechanical **Estimated New Air Conditioner Pricing, Estimated New Furnace Pricing, Estimated Installation Prices, Estimated Professional Labor Costs, research, reviews and ratings, HVAC equipment buying advice**, as well as links to sites where you can obtain other services such as **financing** and **insurance**, and other existing services and those that may later be offered to you (the "Service"). The Service includes advertisements, which are necessary for All Systems Mechanical to provide the Service to you. Unless explicitly stated otherwise, any new features that we may add to ASM-air.com will also be subject to these Terms, and any other special terms of service referenced in the new feature.

2. ASM-air.com Privacy Policy

You understand and agree that when you visit ASM-air.com, you are consenting to the collection and use of information provided by you and about your use of ASM-air.com and the Services, in accordance with the Privacy Policy.

3. Personal Use Only

You may make **personal** use of all of the information you access on ASM-air.com ("Information"), but you may not take any of the Information and reformat and display it, or copy it on your Web site or in any other format, and you may not store or migrate any of the Information or other data from ASM-air.com without All Systems Mechanical's written permission. By using the Service, you agree not to sell, store, distribute, transmit, display, reproduce, modify, migrate, create derivative works from, or otherwise exploit any of the Information content or data related to any portion of the Service. You may print a copy of particular vehicle values and prices and use the Information for your personal, non-commercial use, but you may not otherwise reproduce any material appearing on ASM-air.com. If you want to make commercial use of the All Systems

Mechanical Information or Services, **you must enter into an agreement with us to do so in advance.**

4. Survey Responses, Feedback, and Other Contributions to ASM-air.com

By submitting ideas, survey responses, suggestions, documents, comments, and/or proposals ("Contributions") to ASM-air.com through its surveys, "contact us", or suggestion or feedback Web pages, you acknowledge and agree that: (a) your Contributions do not contain confidential or proprietary information; (b) All Systems Mechanical is not under any obligation of confidentiality, express or implied, with respect to the Contributions; (c) your Contributions automatically become the property of All Systems Mechanical without any obligation of All Systems Mechanical to you and All Systems Mechanical shall be entitled to use, copy, modify, or disclose (or choose not to use or disclose), delete in its entirety, adapt, publish, translate, create derivative works from and/or sell and/or distribute such Contributions for any purpose, in any way, in any media worldwide; (d) All Systems Mechanical may have something similar to the Contributions already under consideration or in development; and (e) you are not entitled to any compensation or reimbursement of any kind from All Systems Mechanical under any circumstances for your Contributions.

5. ASM-air.com's Home HVAC Design and Consultation Program Terms and Conditions

- A Program Overview.** With the ASM Home HVAC Design and Consultation Program ("HVAC Design and Consultation Program", "Design and Consultation Program"), you can complete a questionnaire online and get a specific report of Information relating to your home heating and air conditioning project. By using this program, you are subject to these Design and Consultation Program Terms and Conditions, the ASM-air.com Terms of Service including but not limited to the Arbitration and Class Action Waiver provisions, all of which are incorporated herein by reference, and other terms and conditions provided through the Design and Consultation Program. The prices listed in the Design and Consultation Program may be less than, or more than, the actual prices submitted by an independent HVAC contractor in your area. Any HVAC contractor that submits a written proposal for a project that is not affiliated with All Systems Mechanical, California State Contractor's License Number 963922, is an independent contractor, and is not owned or operated by, nor are they affiliated with or acting on behalf of All Systems Mechanical. All Systems Mechanical, and their affiliates expressly disclaim any liability resulting from a proposal or work completed by an independent HVAC contractor.
- B Program Requirements.** In addition to the other ASM-air.com Terms of Service and other terms of the Design and Consultation Program: (1) your home must be located in a market in which the Design and Consultation Program is offered; (2) you must be the registered owner of the property in question; (3) you must not be a licensed or unlicensed HVAC contractor or technician, or an employee or agent of an HVAC contractor; (4) any licensed or unlicensed HVAC contractor or technician, or an employee or agent of an HVAC contractor who decides to use

the HVAC Design & Consultation Program is in violation of these Terms of Service and forfeits the right to a refund, or any other form or reimbursement; and (5) the personal contact information and the information about your project that you provide in response to our online questionnaire must be accurate, complete, and truthful.

C Restrictions. The Design and Consultation Program is not available in all areas and not all projects are eligible for use of the Design and Consultation Program. Additional restriction include: (1) The Design and Consultation Program may not be used to sell or to trade certain categories of HVAC equipment at All Systems Mechanical's discretion, including, without limitation: current model year (or newer) HVAC equipment; commercial or residential HVAC equipment; HVAC equipment subject to recall or investigation by a government agency; HVAC equipment with a police, or fire history; reconstructed or salvaged HVAC equipment; HVAC equipment without a valid model and serial number; HVAC equipment not originally built for the United States market or that were imported illegally or outside of official manufacturer channels (i.e., "gray market" HVAC equipment); room air conditioners ("window air conditioners"); and room heaters ("space heaters"). (2) The Design and Consultation Program shall not be used to estimate projects pertaining to those including, without limit: portable HVAC equipment; room heaters ("space heaters"); room air conditioners ("window air conditioners"); swamp coolers; ductless air conditioners or heaters; oil burning furnaces; any furnaces that are not considered to utilize natural gas or propane as a fuel source; and any other project which includes, without limit, any equipment that is not considered to be central air conditioning or heating in nature.

D Money-Back Guarantee. If the purchase you make at ASM-air.com does not meet your expectations, All Systems Mechanical will honor the ASM 100% Money-Back Guarantee and refund your money online.

The following Terms and Conditions apply to this Guarantee:

HVAC Design & Consultation Program purchasers qualify if:

- You have not, nor has any member of your household, received a refund from ASM-air.com within the last 12 months.
- You have run two or fewer HVAC Design & Consultation Program reports on the Account.
- Your refund is requested within 30 days of purchase.

Any licensed or unlicensed HVAC contractor or technician, or an employee or agent of an HVAC contractor who uses the HVAC Design & Consultation Program is in violation of these Terms of Service, and will not be provided with a refund.

A refund will not be provided if you have used the HVAC Design & Consultation Program for commercial purposes or otherwise violated these Terms of Service.

E Some Offers Require Review. Although the majority of Program Reports generated by the Design and Consultation Program will be delivered within moments of submitting a valid questionnaire, some reports may require manual review. This manual review process usually will be completed within minutes of submitting a request but occasionally may take until the next business day.

F The Information You Provide in Connection with Your Offer. You acknowledge that if you provide us with any false, incomplete or inaccurate information, including, without limitation, project information or personal contact information, your Design and Consultation Program Report may be immediately invalidated, and a full or partial refund denied. By requesting to use the Design and Consultation Program, you agree that we, our service providers, and our participating HVAC contractors may contact you, by any method that you supplied for your contact information, about HVAC equipment or other products and services that may be of interest to you. By supplying a mobile number, you consent to receive calls or texts at that number, whether manually or automatically dialed, from us and from participating HVAC contractors. You do not have to provide us with a mobile number as a condition of obtaining a Design and Consultation Program Report.

G Participating HVAC Contractors

- 1 Participating HVAC Contractors may pay a monthly subscription to participate in and receive leads through the Design and Consultation Program. Offers provided through the Design and Consultation Program are calculated and generated by a proprietary appraisal tool intended to generate a price reflecting a liquid cash offer to be honored by a Participating HVAC Contractor irrespective of whether you are purchasing HVAC equipment or services from that Participating HVAC Contractor. Design and Consultation Program guarantees to Participating HVAC Contractors that your project will be worth at least the amount listed as "HIGH-FAIR" in the Design and Consultation Program Report. Participating HVAC Contractors are not owned or operated by, nor are they acting on behalf of, All Systems Mechanical, and, except as described herein, are not otherwise affiliated with All Systems Mechanical.
- 2 Participating HVAC Contractors are not obligated to accept your HVAC project at the prices suggested in the Design and Consultation Program, but you are still welcome to try to negotiate a more favorable price for your project, and you are always free to use an HVAC contractor that is not participating in the Design and Consultation Program. Though we think the Program Report allows for a convenient and easy way to estimate the price of your HVAC project, it may not be the lowest sale price that you could receive for your project outside of the Design and Consultation Program.

H Verification Inspections

- 1 Participating HVAC Contractors will conduct a mandatory HVAC project inspection free of charge to verify the accuracy of the project description and condition information that you provided to us online. This verification inspection may include, for example, inspections of ductwork, inspections of all HVAC equipment, measurements of property lines, inspections of electrical wiring and plumbing, inspections of attic and other access points, and any other inspections deemed necessary by the Participating HVAC Contractor to accept your proposed HVAC project at the prices recommended by the Design and Consultation Program. The Participating

HVAC Contractor will submit the results of the verification inspection to you in writing, and may raise or lower the dollar amount of your Design and Consultation Program Report Prices prior to redemption based on the information revealed by the inspection. All decisions of the Participating HVAC Contractor regarding the condition of your project will be final, and the Participating HVAC Contractor may deny acceptance of your project regardless of the Design and Consultation Program Report at any time, for any reason.

- 2 At the conclusion of your HVAC project verification inspection, if the Participating HVAC Contractor decides to accept your project, said contractor will submit an official written proposal, subject to any applicable price adjustments after the verification inspection.
- 3 The written proposal submitted by a Participating HVAC Contractor is a legally binding contract between that independent HVAC contractor, and you, the customer. Participating HVAC Contractors are not owned or operated by, nor are they acting on behalf of, All Systems Mechanical, and, except as described herein, are not otherwise affiliated with All Systems Mechanical. It is your right to accept or deny the written proposal, for any reason at your discretion, and All Systems Mechanical, in no way, accepts responsibility for that decision. All Systems Mechanical expressly disclaims any liability resulting from a proposal or work completed by a Participating HVAC Contractor.

I Release.

BY ACCEPTING AN OFFER PRESENTED BY EITHER AN INDEPENDENT HVAC CONTRACTOR, OR A PARTICIPATING HVAC CONTRACTOR, YOU AGREE NOT TO SUE ALL SYSTEMS MECHANICAL, ITS AFFILIATES, ITS SERVICE PROVIDERS, OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "RELEASED PARTIES") FOR, AND AGREE TO RELEASE AND HOLD HARMLESS THE RELEASED PARTIES FROM AND AGAINST, ANY AND ALL CLAIMS RELATING TO OR ARISING OUT OF ANY HVAC PROJECT OR DESIGN AND CONSULTATION PROGRAM TRANSACTION THAT YOU ENTER INTO WITH AN HVAC CONTRACTOR IN CONNECTION WITH THE DESIGN AND CONSULTATION PROGRAM. IN THE EVENT THAT ANY CLAIMS OR DISPUTES ARISE OUT OF SUCH A TRANSACTION, YOU AGREE TO LOOK SOLELY TO THE HVAC CONTRACTOR THAT INSTALLED, OR OTHERWISE REPAIRED YOUR HVAC EQUIPMENT FOR YOUR REMEDY AND NOT TO THE RELEASED PARTIES.

6. Registration

- A To obtain access to certain services from ASM-air.com (for instance, access to an ASM-air.com account), you may be required to register on ASM-air.com. As part of the registration process, you will be required to select a user name and a password. You agree that the information you supply during that registration process will be accurate and complete, and that you will not register under the name of another person. Failure to provide accurate and timely information may result in your account being closed and/or your access to content provided

through your account being suspended, discontinued, or removed. We reserve the right to disallow use of a user name that we deem offensive or inappropriate. You will be responsible for preserving the confidentiality of your password and for all actions of persons accessing ASM-air.com through any username/password assigned to you. You will notify All Systems Mechanical's Customer Service Department of any known or suspected unauthorized use of your account via email.

- B All Systems Mechanical reserves the right to disclose any information we collect through user accounts and registrations in accordance with our Privacy Policy.

7. Modifications and Termination of Service

All Systems Mechanical reserves the right at any time and from time to time to modify, update, suspend or discontinue all or part of the Service for any reason with or without notice to you. All terminations will be made at All Systems Mechanical's sole discretion and you agree that All Systems Mechanical will not be liable for any termination of your use of or access to the Service, or any loss or damages resulting from such termination.

8. Your Dealings with ASM-air.com Advertisers

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You acknowledge and agree that All Systems Mechanical will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Service.

9. Links to Other Websites

ASM-air.com provides links to other Web sites. You acknowledge and agree that, because All Systems Mechanical has no control over such sites, we are not responsible for them or the resources and information they contain. In particular, we are not responsible for the availability of services related to another Web site that has a link on ASM-air.com; we do not necessarily endorse such sites, and we are not responsible or liable for any content, advertising, products or other materials on or available from such sites. You further acknowledge and agree that All Systems Mechanical will not be liable for any loss whatsoever for any damages caused by or incurred in connection with the use of or reliance on the information, goods or services available through any such site.

10. All Systems Mechanical's Proprietary Rights

You acknowledge and agree that the Service and all materials on ASM-air.com, contain proprietary information and data that is protected by applicable copyright, trademark and other intellectual property laws (All Systems Mechanical's "Proprietary Information"). All materials on ASM-air.com, including such Proprietary Information, may only be used for personal, non-commercial purposes, and you agree not to sell, transfer, reproduce, duplicate, distribute, publish, modify, migrate, store, copy or transmit any material from ASM-air.com unless and until you have obtained our prior written consent. The Proprietary Information covered by this prohibition includes, without limitation, the software programming and html and other code contained in the Web site, All Systems Mechanical HVAC Equipment Prices, All Systems Mechanical

Estimated Fair Price Ranges, HVAC system specifications, any text, graphics, logos, photographs, audio or video material or stills from audiovisual material available on ASM-air.com.

11. Use of All Systems Mechanical Logos

You agree that all of the All Systems Mechanical Marks are the property of All Systems Mechanical, and agree that you will not use the All Systems Mechanical Marks without All Systems Mechanical's prior written permission.

12. No Illegal Use

As a condition of your use of and access to ASM-air.com, you agree not to use the Services for any unlawful purpose or in any way that violates these Terms. You also agree not to use the Services in any way that could damage, disable, overburden, or impair ASM.com or any All Systems Mechanical server, or the associated networks, or interfere with any other party's use and enjoyment of any Services.

13. Dispute Resolution – Mandatory Arbitration and Class Action Waiver

- A Arbitration Agreement:** YOU AND ALL SYSTEMS MECHANICAL AGREE THAT ANY CLAIMS OR DISPUTES ("Claims") THAT ARISE OUT OF OR RELATE IN ANY WAY TO THESE TERMS, ASM-AIR.COM, OR THE SERVICES (INCLUDING BUT NOT LIMITED TO BILLING DISPUTES) SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION OR IN SMALL CLAIMS COURT. In arbitration, there is no judge and no jury. Instead, Claims are decided by an arbitrator whose authority is created by and governed by this arbitration agreement. Review of arbitration awards in the courts is very limited.
- B Class Action Waiver:** YOU AND ALL SYSTEMS MECHANICAL AGREE THAT ALL CLAIMS BETWEEN US WILL BE RESOLVED IN AN INDIVIDUAL ARBITRATION. WE BOTH AGREE THAT THERE WILL BE NO CLASS, REPRESENTATIVE, OR CONSOLIDATED ACTIONS IN ARBITRATION. In addition, neither you nor All Systems Mechanical may participate in a class or representative action in court as a class member if the Claims asserted in the litigation would fall within the scope of this arbitration agreement if asserted directly by you or All Systems Mechanical. To be clear, you and All Systems Mechanical both waive any right to participate in any class action involving disputes between us. This class action waiver is an essential part of our arbitration agreement and may not be severed. If for any reason this class action waiver is found unenforceable, then the entire arbitration agreement will not apply. However, the Jury Trial Waiver set forth in Section 14 of these Terms will remain in full force and effect.
- C Arbitrator Authority:** The arbitrator's authority is governed by this arbitration agreement. You and All Systems Mechanical agree that the arbitrator may award the same relief that a court of competent jurisdiction could award – consistent with and limited by these Terms (including the limitations of liability set forth in Section 16), but the arbitrator may not award declaratory or injunctive relief that extends beyond you and your dealings with All Systems Mechanical. An arbitrator may award attorneys' fees and costs to the prevailing party if a court would be authorized to do so under the applicable law.

- D Arbitration Procedures:** You and All Systems Mechanical agree that your agreement affects interstate commerce, and the Federal Arbitration Act applies. All arbitrations shall be conducted by JAMS Endispute under its Streamlined Arbitration Rules and Procedures ("JAMS"). These Rules are available on the JAMS website at <http://www.jamsadr.com> or by calling 1.800.352.5267. If there is a conflict between the JAMS Rules and this arbitration agreement, then this arbitration agreement shall control. All Systems Mechanical will pay all filing fees and costs associated with commencing an arbitration, but you will be responsible for paying your own attorneys' fees (if you chose to use an attorney in arbitration) unless you prevail in the arbitration and the arbitrator finds that you are entitled to recover your fees under the law. Except for claims determined to be frivolous, All Systems Mechanical agrees not to seek an award of attorneys' fees in arbitration even if an award is otherwise available under applicable law. If you bring an arbitration against All Systems Mechanical, the arbitration hearing will be held in your hometown area, unless we both agree on a different location.
- E Survival:** This arbitration agreement survives the termination of these Terms between you and All Systems Mechanical.

14. JURY TRIAL WAIVER.

You and All Systems Mechanical expressly and knowingly **WAIVE THE RIGHT TO TRIAL BY JURY**. This means that if for any reason the arbitration agreement contained in Section 13 is not enforced or is found inapplicable, our claims against each other will be resolved by a judge rather than a jury.

15. Disclaimer of Warranties:

You Expressly Understand and Agree That:

- A Your use of the Service is at your sole risk. Decisions based on information contained in our website are the sole responsibility of the visitor. All Systems Mechanical provides the Service to you on an "as is" and "as available" basis. All Systems Mechanical and its owners, shareholders, subsidiaries, affiliates, officers, employees, agents, partners and licensors expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We do not warrant the accuracy or completeness of the information, text, graphics, links, or other items contained on the site, and we expressly disclaim liability for errors or omissions in these materials.
- B All Systems Mechanical and its owners, shareholders, subsidiaries, affiliates, officers, employees, agents, partners and licensors make no warranty that (i) the Service will meet your requirements; (ii) the Service will be uninterrupted, timely, secure or error-free; (iii) the results that may be obtained from the use of the Service will be accurate or reliable; (iv) the quality of any products, services, information or other material accessed, purchased or obtained by you through the Service will meet your expectations; and (v) any errors will be corrected.
- C All material and information obtained through the use of the Service is accessed at your own discretion and risk, and you will be solely responsible for any

damage to your computer system or loss of data that results from the accessing of any such material.

- D No advice or information, whether oral or written, obtained by you from ASM-air.com or its affiliates or partners through or from the Service shall create any warranty whatsoever.
- E The HVAC equipment prices and valuations are opinions and may vary from project to project. Actual valuations are based upon current available information and analysis of market conditions, and will vary depending on specifications, equipment condition or other particular circumstances pertinent to an HVAC project or the transaction or the parties to the transaction. All Systems Mechanical assumes no responsibility for the accuracy of HVAC equipment prices and no responsibility for errors or omissions.

16. Limitation of Liability

You expressly understand and agree that All Systems Mechanical and its owners, shareholders, subsidiaries, affiliates, officers, employees, agents, partners and licensors shall not be liable to you for any direct, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if All Systems Mechanical has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) the cost of procurement of substitute goods or services resulting from any goods, data, information or services obtained or received or transactions entered into as a result of your use of the Service; (iii) statements or conduct of any third party related to the Service; or (iv) any other matter relating to the Service. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations of Sections 15 and 16 may not apply.

17. Indemnity and Release

When you use ASM-air.com, you are agreeing to indemnify All Systems Mechanical, its owners, shareholders, subsidiaries, affiliates, officers, employees, partners, and licensors and hold them harmless from any and all claims and expenses, including attorney's fees, arising from your use of the ASM-air.com Web site, your use of the Service, or your submission of Contributions as set forth in Section 4 above. By using ASM-air.com you are agreeing to release All Systems Mechanical and its owners, shareholders, subsidiaries, affiliates, officers, employees, partners, and licensors from any and all claims, fees, costs, damages and obligations of any kind whatsoever that you may have against them arising out of or in any way related to such claims or obligations and to any disputes regarding use of ideas and/or related materials submitted to ASM-air.com. **You hereby agree to waive all laws that may limit such releases. For example, you specifically agree to waive the provisions of California civil code section 1542, which provides:**

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him must have materially affected his settlement with the debtor."

18. Changes and Updates to These Terms of Service

All Systems Mechanical may occasionally update or change these Terms, so we encourage you to view them often. Your continued use of the Service constitutes your agreement to these Terms and any updates.

19. General Information

- A Choice of Law. The Terms and the relationship between you and All Systems Mechanical shall be governed by the laws of the State of California without regard to its conflict of law provisions.
- B Waiver and Severability of Terms. The failure of All Systems Mechanical to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect.
- C Entire Agreement. The Terms constitutes the entire agreement between you and All Systems Mechanical and governs your use of the Service, superseding any prior Terms with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other All Systems Mechanical services, affiliate or third-party services.
- D Statute of Limitations. You agree that any claim, demand, or cause of action arising out of or related to the Service or your access or visit to ASM-air.com or these Terms must be filed by you within one (1) year after such claim, demand, or cause of action arose, or it is forever barred.

20. Reporting Violations to the Terms

Please report any violations of the Terms to ASM-air.com Customer Service.