

USG TERMS & CONDITIONS—U.S. OR U.S. TERRITORIES TRANSACTIONS

1. Terms & Conditions. These Terms & Conditions (“Terms”) govern the sale of Products from United States Gypsum Company, USG Interiors, LLC, USG International, and/or their affiliate or subsidiary companies¹ (collectively or individually, “USG”) to Customer where such Products are to be used within the United States or its Territories. “Products” means the products identified on the proforma invoice, order acknowledgement, or invoice, whichever is issued later by USG to Customer, and “Customer” means the entity identified on such documents. **These Terms, the terms contained on any proforma invoice, invoice, and/or order acknowledgement, and the terms of the Credit Application and Agreement between USG and Customer, if any, represent the final and complete agreement of USG and Customer as to the sale and purchase of Products (the “Agreement”). Any and all additional or different terms than those contained in the Agreement are rejected unless expressly accepted in writing by an authorized representative of USG.**

2. Price and Payment. Customer shall pay in full for all Products on the due date specified on the Invoice. No payments shall be subject to any setoffs, deductions or claims. Regardless of any statement appearing on a check or otherwise, USG’s acceptance of a payment in an amount less than that due shall in no way be an accord and satisfaction or prejudice USG’s rights and remedies to collect the full amount due. Prices do not include any sales taxes or other charges levied by any governmental authority upon the sale, use or transportation of the Products, all of which shall be paid by Customer, including, without limitation, applicable customs duties and tariffs.

3. Shipping/Title/Risk of Loss. Unless otherwise expressly set forth in writing by USG, all Products will be delivered Ex Works (as defined in Incoterms 2010 revision). Title and risk of loss to Products shall transfer to Customer when the Products are tendered to Customer or Customer’s carrier in accordance with the applicable delivery terms. Any handling of the Products after transfer of risk of loss shall be at Customer’s sole risk. USG shall retain a Uniform Commercial Code purchase money security interest in the Products pursuant to Illinois law until final payment is received. Dates of shipments are estimated and not guaranteed.

4. Product Inspection; Non-conformity. Customer must inspect the Products within 48 hours after delivery and notify USG in writing of any physical damage to the products or non-conformity with the purchase order or invoice. Failure to make inspection and deliver written notice of such damage or non-conformity within such 48 hour period shall constitute irrevocable acceptance of the delivered Products and a waiver of any damage or non-conformity that was or should have been detected. At USG’s election, the inspector inspecting the Products shall

be subject to USG’s approval. As Customer’s sole remedy for any damaged or non-conforming Products of which Customer has delivered to USG timely notice, USG, at USG’s election, shall either: (a) replace the damaged or non-conforming Products or (b) refund the price paid by Customer to USG for such damaged or non-conforming Products.

5. Cancellations; Returns. If Customer fails to make payment in accordance, or otherwise comply, with all terms of the Agreement, USG may, at its option (and in addition to other remedies), cancel any unshipped portion of Customer’s order, without liability to USG, and Customer shall remain liable for all unpaid amounts. Subject only to Section 4 above, Products cannot be returned, and orders, once accepted by USG, cannot be cancelled without USG’s prior written consent, which may be granted or withheld in USG’s sole and absolute discretion. In the case of cancellation of orders of special or non-stock Products, Customer’s cancellation may be conditioned upon Customer’s payment in full of the price of finished Products and, for other Products in process of manufacture, the payment of a cancellation charge based on the percentage of completion as applied to the price.

6. WARRANTY AND DAMAGES DISCLAIMER.

a. **Warranty:** The Products are covered by either a product-specific warranty or, if there is no product-specific warranty, by USG’s standard limited warranty (see [USG’s Standard Limited Warranty](#)). For a list of products covered by a product-specific warranty, please see [USG Product Warranty Page](#), or visit [www.usg.com](#). The warranty that applies is the applicable warranty in effect for the Products as of the date of the proforma invoice, or if no proforma invoice, as of the date of the order acknowledgement for the Products (“Written Warranty”).

b. **DISCLAIMER: THE WRITTEN WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE PRODUCTS AND EXCLUDES ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES OTHERWISE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, EXCEPT WHERE PURCHASE OF THE PRODUCTS IS SUBJECT TO CONSUMER PRODUCT WARRANTY LAWS, IN WHICH INSTANCES ANY APPLICABLE IMPLIED WARRANTIES ARE LIMITED TO THE PERIOD OF THE APPLICABLE WRITTEN WARRANTY, OR SUCH SHORTER PERIOD AS PERMITTED OR REQUIRED UNDER APPLICABLE LAW. IN NO EVENT WILL USG BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.** Recommendations, advice, representations, warranties, commitments or agreements that are inconsistent with the foregoing disclaimer shall not be binding upon USG unless in a writing signed by an authorized representative of USG. USG’s only obligation is to provide the Products in the quantities ordered by Customer (which order is accepted by USG) without regard to the Products’ appropriateness to Customer’s application. Customer represents and

¹ Products sold by USG Ceilings Plus, LLC are governed by separate terms and conditions which are available at <http://www.ceilingplus.com>.

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warrants that Customer is not a “consumer” as defined by any applicable usury or consumer protection laws.

7. Force Majeure. Delay in delivery or non-delivery by USG shall not be a breach or default by USG if performance is delayed or made impracticable by the occurrence of any one or more of the following: (a) fires, floods, or other casualties, (b) wars, riots, embargoes, governmental regulations or martial law, (c) inability to obtain necessary materials from usual sources of supply, (d) shortage of transportation or delays in transit, (e) strikes or other labor troubles, and (f) other conditions not reasonably within USG’s control, whether or not of a kind mentioned herein.

8. Arbitration and Choice of Law. The Agreement (including, without limitation, these Terms) shall be governed by the laws of the State of Illinois, without regard to its choice of law provisions. Any controversy, claim, or dispute arising out of or in connection with the Agreement shall be settled by final and binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (“Rules”), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration shall be heard by a single arbitrator appointed in accordance with the Rules, and shall be conducted in English. The arbitration shall be in a city with a population of 250,000 or more closest to Customer’s principal office address. If a controversy or claim relates to or is the subject of a mechanic’s or construction lien, USG may proceed in accordance with applicable law to preserve and enforce its lien rights. **TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANY ARBITRATION RULE OR PROCEDURE, (A) NO CONTROVERSY OR CLAIM ARISING OUT OF RELATING TO THE AGREEMENT SHALL BE CONSOLIDATED OR JOINED WITH ANY OTHER PERSON’S CLAIM AND NO CLASS ACTION OR REPRESENTATIVE ACTIONS SHALL BE PERMITTED UNDER THE AGREEMENT, AND (B) IF ANY CLASS OR REPRESENTATIVE ACTION CANNOT BE WAIVED UNDER APPLICABLE LAW, THE PARTIES AGREE THAT SUCH ACTION SHALL BE ARBITRATED.**

9. Export Compliance/Restrictions. Customer certifies that it is the customer identified in the Purchase Order for the Products and that Customer is not purchasing the Products for export outside the U.S. or its Territories. Customer understands and acknowledges that USG is specifically relying on Customer’s representations and compliance with this Section 9. Customer shall comply fully with all relevant regulations of the U.S. Department of Commerce and with the U.S. Export Administration Act to assure that any delivered Products are not exported in violation of United States law.

10. Miscellaneous Provisions. Customer shall pay to USG all costs of collection, including, without limitation, reasonable attorneys’ fees, incurred by USG in enforcing the Agreement, including, without limitation, collecting any money due from Customer and enforcing USG’s lien rights. The unenforceability or invalidity of any one or more

portions of the Agreement shall not render any other portion unenforceable or invalid, which remaining portions shall continue in full force and effect. No waiver by USG of any term or any obligation of Customer shall constitute a waiver of any other term or obligation. Customer shall not assign or transfer its rights or obligations under the Agreement without the prior written consent of USG. All of Customer’s representations, warranties and indemnities under the Agreement shall survive the consummation of or termination or cancellation of any purchase and sale of Products. Which party prepared the Agreement shall have no bearing on its construction.

11. Customer covenants, represents and warrants that Customer (i) is not in violation of any law relating to terrorism or money-laundering, including Executive Order No. 13224 and the U.S. Patriot Act; (the “Anti-Terrorism Law”) (ii) is not a Prohibited Person (as defined below); (iii) does not conduct any business or engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person. “Prohibited Person” means (i) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (iii) a Person with which USG is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (iv) a Person who commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, (v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or at any other official publication of such list, or (vi) a Person who is affiliated with a Person described in clauses (i) – (v) above. Customer further covenants and represents that Customer (A) does not deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 and (B) does not engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.