

1. **Terms & Conditions.** These Terms & Conditions (“Terms”) govern the sale of Products from United States Gypsum Company, USG Interiors, LLC, USG International, Ltd., and/or their affiliate or subsidiary companies¹ (collectively or individually, “USG”) to Customer where such Products are to be shipped outside their country of origin. “Products” means the products identified on the invoice, proforma invoice or order acknowledgement, whichever is issued later by USG to Customer. “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 agreement and application 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 or, if no due date is specified on the invoice, under the terms provided by USG to Customer in writing. 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 on the proforma invoice, order acknowledgement, or other written agreement between USG and Customer, all Products will be Delivered at Terminal (as defined in Incoterms 2010 revision), and title and risk of loss to Products shall transfer to Customer when the Products are delivered and unloaded at the named terminal. 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 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 damages 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 only warranty, if any, provided for the Products is the product-specific warranty, including all terms, limitations, and exclusions, as stated in the product literature available on USG’s website at www.usg.com (see [USG Product Warranty Page](#)) 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, IF ANY, 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**

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

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

c. **The Products come with guarantees that cannot be excluded under the Australian or New Zealand Consumer Laws.** Under these laws, consumers, as defined by these laws, are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Consumers are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

d. **Compliance with the Local Laws and Packaging/Labeling:** USG makes no representations or warranties concerning, and it shall be Customer's obligation to ensure, the Products' compliance with local laws, regulations and legal requirements, including, without limitation, applicable customs requirements. Customer shall pay all costs associated with ensuring the Products comply with local laws, regulations and other legal requirements, including, without limitation, customs requirements. If labeling, packaging, or other modifications are necessary for compliance with local customs or any other requirements, Customer shall notify USG as to such requirements with reasonable advance notice and shall pay all costs associated with such labeling, packaging, or other modifications in advance of shipment; otherwise, it shall be presumed that the Products and USG's standard labeling and packaging will comply with local customs and other requirements.

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. **USG and Customer specifically disclaim the application of the U.N. Convention for the Sale of Goods.** Any controversy, claim, or dispute arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall be held in London, England, Chicago, Illinois, or Miami, Florida, whichever location is closest to Customer's principal place of business. The arbitration shall be conducted in English. **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 ARBITRATION 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.**

Judgment on the award rendered by the arbitrator(s) shall be entered by any court in the United States or United Kingdom having jurisdiction thereof. Customer hereby (a) irrevocably and unconditionally consents to submit itself to the exclusive jurisdiction of such court(s) and waives any objection to the laying of venue in any such court(s). Notwithstanding the foregoing arbitration provisions, 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.

9. **Export Compliance/Restrictions.** Customer certifies that it is the customer identified in the Purchase Order for the Products. 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 and to comply fully with all other applicable, laws, regulations and legal requirements relating to such export or import into another country. Customer understands and acknowledges that USG is specifically relying on Customer's representations and compliance with this Section 9.

10. **Compliance with U.S. Anti-Terrorism and Similar Laws.** Customer covenants, represents and warrants that (i) Customer 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) Customer is not a Prohibited Person (as defined below); (iii) Customer 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 whom 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 does not (A) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or (B) 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. Customer further covenants and agrees to deliver to USG any certification or other evidence requested from time to time by USG in its sole reasonable discretion, confirming Customer’s compliance with this paragraph.

11. **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.