

KEENE BUILDING PRODUCTS, INC.

Terms and Conditions of Sale

The following Terms and Conditions of Sale (the "Terms of Sale") are applicable to the sale of all products (the "Products") by Keene Building Products, Inc., an Ohio corporation ("Seller"), to any purchaser thereof ("Buyer"). All orders are subject to approval by Seller at its corporate headquarters in [Mayfield Heights], Ohio. Any amendment, waiver or other alteration of the Terms of Sale by Seller shall be effective only if made in a writing signed by a designated officer or director of Seller, and Buyer's attempts to alter such Terms of Sale with printed purchase orders, acknowledgments or similar documentation shall be void.

1. **Entire Agreement; Assent to and Acceptance of Terms of Sale.** These Terms of Sale constitute a complete and exclusive statement of the agreement between Seller and Buyer with respect to, and shall exclusively govern, the sale of the Products by Seller to Buyer in connection with or as contemplated by Seller's written or oral proposals, quotations and sales to Buyer (any such item being a "Quotation") and/or Buyer's written or oral purchase orders or other communication to Seller related to the Products (any such item, written or oral, being a "Purchase Order"), and shall continue in effect until terminated in writing by Seller. The sales of Products contemplated by these Terms of Sale are "forward contracts" and Buyer and Seller are "forward contract merchants," as those terms are used in the United States Bankruptcy Code, as amended. In the event of a conflict between the terms and conditions contained in a Quotation, invoice or final order acknowledgement and those contained in these Terms of Sale, the terms contained in these Terms of Sale shall govern. Notwithstanding any different or additional terms or conditions contained in a Purchase Order, Seller accepts Buyer's order only on the condition that Buyer expressly accepts and assents to these Terms of Sale. Buyer's order shall not be binding upon Seller unless and until such order is accepted by Seller in writing. In the absence of Buyer's acceptance hereof, Seller's commencement of performance or Seller's acknowledgement of a Purchase Order shall be for Buyer's convenience only and shall not be construed as Seller's acceptance of any of different or additional terms contained in a Purchase Order. In addition, Buyer's acceptance of any Products shall be deemed to be an acceptance of all of the Terms of Sale. Seller hereby objects to any additional, contradictory or different terms contained in any initial or subsequent Purchase Order from Buyer pertaining to the Products, including, but not limited to, any indemnification, remedy or warranty provisions. Seller's failure to object specifically to provisions contained in any Purchase Order shall not be deemed a waiver of the provisions contained in these Terms of Sale. Without limiting the generality of the foregoing, Seller's rights and obligations hereunder will not be qualified by or subject to any vendor credentialing, code of conduct, or similar requirements imposed by Buyer upon any of its vendors or suppliers.

2. **Payment.** For purpose of payment, each shipment and invoice therefore shall be a separate sale. Payment is due and payable no later than net [thirty (30)] days from date of invoice (the "Due Date"). All payments shall be made in U.S. dollars. Buyer's outstanding unpaid balances shall be subject to a finance charge, until such outstanding amounts are paid in full, at a rate equal to the lesser of (i) eighteen percent (18%) per annum; or (ii) the maximum rate permitted by law. Buyer shall also pay Seller's cost of collection (including reasonable attorneys' fees). Payments received may be applied by Seller against any obligation owed by Buyer to Seller. Seller may refuse or delay shipments if Buyer fails to pay promptly any payments due Seller. If Seller shall, in its sole discretion, deem itself to be insecure regarding Buyer's ability to fulfill the terms of payment herein specified, whether due to Buyer's financial condition, status as an international account, or any other reason, Seller may by notice to Buyer (i) require full or partial payment in advance of delivery or (ii) reduce the credit terms. Any authorized early payment discounts must be taken at the time of invoice payment and will be calculated from the invoice date to the date payment is received by Seller. To secure the payment of the purchase price of the Products sold hereunder, Buyer grants Seller a purchase money security interest in all Products sold hereunder whether constituting equipment, inventory, fixtures and/or general intangibles, including all accessions to and replacements thereof, and all proceeds thereof to perfect or continue the security interest created hereby. Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive. Time is of the essence and, in addition to any other rights, Seller shall further have the right, at its option, to terminate any sale of Products without notice to Buyer if (i) payment is not made on the Due Date, (ii) Buyer becomes insolvent, or (iii) Buyer's ability to pay debt in the normal course of business otherwise becomes impaired.

3. **Prices; Taxes, Freight and Other Costs.** Unless otherwise specified in a Quotation or other communication from Seller to Buyer, the price of Products shipped hereunder shall be an amount equal to Seller's price on the date of shipment, and shall not include applicable Federal, State and local transactional costs and expenses, including, but not limited to, freight, taxes, duties, tariffs or other additional costs imposed by reason of the sale of the Products, which costs and expenses shall be the responsibility of Buyer. Prices are established as independent of any pricing or other arrangement that may be in place between Buyer and its customers or any other party.

4. **Title; Risk of Loss; Delivery.** Title to and risk of loss shall pass to Buyer upon delivery of Products to carrier. Choice of carrier and shipping method and route shall be at the election of Seller. Seller shall have the right to deliver all Products covered hereby at one time or in partial shipments from time to time, within the agreed time for delivery. All delivery dates are approximate, and Seller shall not be liable for damages or costs which arise in connection with the delivery of goods after the date stated on any Quotation, Purchase Order or other document. Delivery dates are further dependent upon the prompt receipt by Seller of all information required by Seller to proceed with work immediately and without interruption.

5. **Shipments; Shipment Quantities; Shortages.** With respect to each shipment of Products, Buyer shall give Seller reasonable advance notice, which notice shall include date of delivery and shipping instructions. Seller shall not be required to deliver in any month more than the monthly quantity agreed, or if no monthly quantity is specified, more than the pro-rata amount of the maximum quantity specified, nor shall Seller be bound to tender delivery of any quantities for which Buyer has not given reasonable advance notice. If Buyer fails to accept delivery of the stipulated or minimum pro-rata quantity in any month, or fails to give such notice, Seller may, at its option, in addition to its other rights and remedies, cancel such deliveries or parts thereof. All Products shipped hereunder shall be subject to Seller's usual tolerances and variations as to quantity. Unless Seller receives written notification of variances in quantity within sixty (60) days of the invoice date, the invoiced quantity shall be conclusive.

6. **Inspection; Acceptance of Products.** Upon receipt of Products, Buyer agrees to immediately inspect and/or test the Products. The Products shall be deemed accepted by Buyer, and all claims with respect to any nonconforming Products shall be deemed waived by Buyer, unless Buyer provides Seller, within ten (10) days of the delivery date, a written notice specifying all defects or discrepancies in the quality or quantity of Products. Buyer shall permit Seller to inspect any damaged or otherwise nonconforming Products. Seller shall be under no obligation to notify Buyer of any changes to the processing, design, composition, or performance of its products, unless such change cause such products to be non-conforming in accordance with the terms hereof.

7. **Cancellation.** Once an order is accepted by Seller, it may not be cancelled or changed by Buyer, nor shall Buyer be entitled to delay shipment or performance, except with the written consent and upon terms and conditions approved by Seller in writing. If Seller consents to the cancellation of an order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller within thirty (30) days of such cancellation, all costs and expenses incurred by Seller in connection with Buyer's order (including without limitation, any restocking fee and reasonable cancellation charges) of an amount not less than fifteen percent (15%) of the cancelled order. Any extra cost incurred by Seller to meet Buyer's request for rescheduling/cancellation will be Buyer's responsibility.

8. **Force Majeure.** Seller shall not be liable for delays in delivery or for failure to perform, and performance shall be excused, if such failure is due to causes beyond the reasonable control of Seller or its subcontractors, including, but not be limited to, force majeure, acts of God, acts or omissions of Buyer, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, quarantine restrictions, flood, natural disasters, riot, war, delays in transaction or inability to obtain necessary labor, materials or supplies or any cause which renders Seller's performance commercially impractical under Section 2-615(a) of the Uniform Commercial Code, as amended.

9. **Intellectual Property.** Buyer hereby acknowledges and agrees that Seller is the owner of the entire right, title and interest in the Intellectual Property (as defined below). Buyer further acknowledges and agrees that (i) Seller has exclusive rights to use the Intellectual Property and that any unauthorized use of the Intellectual Property is and shall be deemed an infringement of Seller's rights; (ii) that Buyer acquires no right, title or interest therein; and (iii) that any and all goodwill associated with the Intellectual Property shall inure exclusively to Seller's benefit. For purposes of this Section 9, "Intellectual Property" shall mean: (a) any commercial trademarks, service marks, trade names, slogans, designs, insignia, emblems, symbols, brand names, market identities and other proprietary business identifying characteristics now used or hereinafter used by Seller; and (b) any patents, copyrights, trade secrets, technology, product designs or ideas, or other intellectual property rights owned by Seller. Under no circumstances will Buyer acquire any right, title, or interest in any of such Intellectual Property by virtue of the purchase or sale of Products under this or any other Purchase Order. All work product or other technology or inventions developed by Seller, either alone or with others, under or in connection with this Purchase Order or the Products will remain the property of Seller, and will not be assigned to or constitute property of the Buyer (whether as work product, "work-made-for-hire," or otherwise).

10. **Confidentiality.** Buyer agrees to maintain in strict confidence and will not, directly or indirectly (including through its principals, employees, agents or affiliates), divulge, transmit, publish, release, or otherwise use or cause to be used in any manner to compete with or contrary to the interests of the Seller or its affiliates, any confidential or proprietary information relating to the Seller's products, services, pricing, technology, business relationship, or customers, or otherwise relating to the Seller's business operations. Buyer will at all times use the same level of care (but in any event will not use less than commercially reasonable care), to prevent disclosure of the confidential and proprietary information of the Seller that it uses with its own information of similar sensitivity or importance. Buyer acknowledges that all confidential proprietary information regarding the Seller compiled or obtained by, or furnished to Seller, in connection with the Products or the Purchase Order, is confidential information and the Seller's exclusive property. Buyer shall be responsible for any disclosure of confidential or other information in violation of this Section 10 by any of its principals, employees, affiliates, or agents.

Limited Warranty; Exclusive Remedy. Seller warrants that the Products will conform to Seller's specifications, as in effect at the time of shipment. Seller's sole obligation under this warranty shall be at its option to repair or replace any Product or part thereof which proves to be other than as warranted; provided that written notice of the alleged defect shall have been given by Buyer, within ten (10) days after discovery thereof, to Seller prior to thirty (30) days from the date of shipment to Buyer. EXCEPT AS SET FORTH IN THIS SECTION 11, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE PRODUCTS OR THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE PRODUCTS WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING. Any warranty made by Seller will be expressly subject to proper use of the Products in accordance with any directions for use or other applicable instructions or documentation. [No warranty shall apply in situations of error, omission, or negligence by the product's operator or custodian]. Further, any course of action for breach of the foregoing warranty shall be brought within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first. BUYER'S SOLE REMEDY IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTIES IS THE REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCT BY SELLER. Seller's repair or replacement of any Products in the manner contemplated by this limited warranty will not be deemed an admission of any fault on the part of Seller or its principals or affiliates, or an admission that the Products are otherwise defective or non-conforming.

11. **Limitation of Liability.** IN NO EVENT SHALL SELLER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT LIABILITY, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE PURCHASE PRICE OF THE PRODUCTS.

12. **Disclaimer of Consequential Damages; Buyer Indemnity.** IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION OR WARRANTY IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. "CONSEQUENTIAL DAMAGES" FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY TO ANY PERSON, OR LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED THROUGH THE USE OF THE PRODUCTS), DAMAGES OR LOSSES RESULTING FROM CLAIMS OF OTHER PERSONS AGAINST BUYER, OR DAMAGES OR LOSSES SUSTAINED AS THE RESULT OF WORK STOPPAGE. BUYER SHALL INDEMNIFY SELLER ITS OFFICERS, MANAGERS, EMPLOYEES AND AGENTS AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY. Without limiting the foregoing, under no circumstances will Seller be responsible for any purchase price reimbursements, costs, penalties, fees, or other amounts associated with Buyer's purchase or acquisition of any replacement product.

13. **Compliance with Laws; Regulatory Matters.** Buyer represents and warrants that Products will not be used, resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations of any federal, local, state or other governmental entity including export/import controls imposed by the U.S. Government (collectively, the "Regulations"). In the event Buyer knows or is aware of any Regulation that would adversely impact the transaction(s) contemplated by a Quotation and/or a Purchase Order, Buyer shall immediately advise Seller of the same. If Seller, in its sole discretion, determines that the effect of the Regulations is a material increase in Seller's risk with respect to such transaction, Seller may, without cost, liability or penalty of any kind, withdraw its Quotation and/or revoke its acceptance of a Purchase Order. If Buyer or any of its employees, agents, representatives, or subcontractors are required to enter Seller's premises to fulfill the requirements of this Purchase Order, Buyer agrees to cause those individuals to abide by Seller's security and safety procedures and requirements. The safety and health of said individuals while on Seller's premises is the responsibility of Buyer.

14. **Disputes.** Any contract arising hereunder or relating hereto shall be governed by the laws of the State of Ohio, without regard to its conflict or choice of law provisions. Any dispute arising between Buyer and Seller with respect to the transactions contemplated hereby shall be resolved by arbitration in Cleveland, Ohio, in accordance with the Rules of the American Arbitration Association, and the award of the arbitrator(s) shall be final and binding upon the parties. Notwithstanding the foregoing, Seller may institute an action for collection of any amount due from Buyer hereunder in any court of competent jurisdiction, in which case Buyer hereby consents to the personal jurisdiction and venue of the federal and state courts located in Ohio. No action, regardless of form, arising out of, or in any way connected with, Products may be brought by Buyer more than one (1) year after the cause of action has accrued. It is specifically agreed that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

15. **Early Termination.** Seller may immediately terminate this Agreement without notice to Buyer if Buyer (i) makes an assignment for the benefit of creditors, (ii) becomes insolvent or is otherwise unable to pay its debts in the ordinary course of business, or (iii) is the subject of any voluntary or involuntary proceedings in bankruptcy, or under any other insolvency or similar law, or for corporate reorganization or for receivership.

16. **General.** Buyer may not assign its right under or interest in any Purchase Order without the prior written consent of Seller. These Terms of Sale shall be binding upon and inure to the benefit of Buyer and Seller, their successors and permitted assigns. No waiver by either party of any breach of these Terms of Sale shall constitute a waiver of any other breach. If any provision hereof is held to be invalid or otherwise unenforceable for any reason, all other terms and remaining conditions will continue to be in force. Any clerical errors are subject to correction. Buyer shall reimburse Seller for reasonable attorneys' fees necessarily incurred in order to enforce these Terms of Sale or any provision hereof or to secure cost and/or damages pursuant to any other remedy, legal or equitable, arising from Buyer's breach hereof. Under no circumstances will Buyer be permitted to publicly disclose or release any advertising or publicity disclosing the existence or terms of any business relationship between Buyer and Seller (including without limitation through the use of Seller as a client reference or the use of the Seller name, likeness, or trademarks).