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 acceptance by Seller in accordance with the Terms of Sale. Seller reserves the right to refuse any order. The sellers of each Product and any substitute for such Product shall be binding only upon and inure to the benefit of Buyer and Seller, their successors and assigns.

1. Acceptance Agreement. To accept and/or purchase from Seller any and all Products (as the term “Products” shall be used hereafter), Buyer agrees to be bound by these Terms of Sale in all respects.

2. 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. Prepaid orders established are independent and not to be considered as any form of guarantee or credit that may be in place between Buyer and Seller or a customer or any other party.

3. 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 hereunder 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 Products, in addition to or instead of any other remedies available to Buyer.

4. 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 the cause of the circumstances beyond the reasonable control of Seller or its subcontractors, including without limitation, fire, explosion, flood, drought, acts of God, labor trouble, governmental restrictions or requisitions, war, strikes, labor or material shortages.

5. 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 intellectual property rights and (ii) Buyer acquires no right, title or interest in or to the Intellectual Property nor any patent, copyright, trade name, trade secrets, technology, product design or ideas or other intellectual property rights from Seller and that under no circumstances will Buyer acquire any right, title, or interest in any of such Intellectual Property or by virtue of the purchase of the Products or the sale of Products under or pursuant to these Terms of Sale. All such rights shall be owned by Seller and shall not be assigned to or constituted of the property of Buyer (whether as work product, “work-made-for-hire,” or otherwise).

6. 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, directly or indirectly, any confidential, proprietary information related to the financial, technical, or other information or knowledge of Seller.

7. Cancellation. Buyer may cancel or modify any order for Products prior to the acceptance of such order by Seller, subject to Buyer’s payment of all amounts due and all other terms and conditions which may be applicable 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.

8. Damages; Buyer Indemnity. Seller shall not be liable for, or under any circumstances, be responsible for any special, incidental, or consequential damages, losses or expenses, including but not limited to, any indemnification, remedy or warranty, arising directly or indirectly from the sale of any Product, and Buyer hereby agrees to defend, indemnify and hold Seller harmless from and against any such damages, losses or expenses or costs that may be incurred by Seller, and Buyer agrees to pay all expenses, judgments, losses and costs that may be incurred by Seller in connection with any action brought by Buyer to recover such losses or expenses.

9. Limitation of Liability. In no event shall Seller’s liability arise as a result of the sale of any Product or any related, exchangeable or other item, or any action taken or caused by Seller, whether the alleged cause of action be based on contract or negligence, or any other theory of liability, and in no event shall Seller be liable for any incidental, special, or consequential damages, or for any lost profits, or any economic losses, whether based on contract, negligence or any other theory of liability, or whether Seller’s liability is based upon Seller’s alleged failure to perform, Seller’s negligence, Seller’s failure to act, or any other cause.

10. Non-Transferability; Assignment. Buyer agrees that all rights under these Terms of Sale shall not be transferred, assigned, or otherwise conveyed without the prior written consent of Seller, unless otherwise prohibited by applicable law.

11. Governing Law; Jurisdiction. These Terms of Sale are “forward contracts” and Buyer and Seller are “forward contract merchants,” as those terms are used in section 2-201 of the Uniform Commercial Code, as amended. In the event of a conflict between the terms and provisions of these Terms of Sale and the provisions of the Uniform Commercial Code, as amended, then the provisions of these Terms of Sale shall govern. The parties agree that these Terms of Sale are governed by the laws of the State of Ohio, without regard to its conflict of law provisions.

12. Disclaimers. Seller shall not be liable for any errors or omissions in any Quotation or other communication to Buyer, or for any other communication or other matter related to Buyer, or to other persons or organizations, which are in any way related to or connected to the Products or the sale thereof, whether or not such errors or omissions are the result of Seller’s negligence. Buyer agrees to use all due care and skill in the use of the Products and to use the Products solely for the purposes for which they are intended and as shown to Buyer by Seller. Buyer further agrees to use the Products in accordance with all rules, regulations, instructions and manuals of Seller, and as shown to Buyer by Seller, including 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.

13. Cancellation of Order. Buyer shall not be entitled to cancel, or return, or otherwise dispose of any Product for any reason after Buyer has agreed to accept delivery of such Products by Seller prior to the date of shipment, other than in the event Buyer 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 may condition acceptance of any Order placed by Buyer on the specific terms contained in a Quotation and/or a Purchase Order, and Buyer agrees to pay all amounts due and all other terms and conditions which may be applicable in accordance with any directions for use or other applicable instructions or documentation.

14. Indemnification; Seller Indemnity. Buyer agrees to indemnify, defend and hold Seller harmless from any and all liabilities, claims, losses or expenses, including but not limited to, any indemnification, remedy or warranty, arising directly or indirectly from the sale of any Product, and Buyer agrees to pay all expenses, judgments, losses and costs that may be incurred by Seller in connection with any action brought by Buyer to recover such losses or expenses.

15. Buyer’s Indemnity. All Claims. Buyer hereby releases, and waives any claim against, Seller with respect to the transaction(s) contemplated by a Quotation and/or 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 provisions of these Terms of Sale and the provisions of the United States Bankruptcy Code, as amended, then the provisions of these Terms of Sale shall govern. The parties agree that these Terms of Sale are governed by the laws of the State of Ohio, without regard to its conflict of law provisions. All Claims. Buyer’s obligations hereunder will not be qualified by or subject to any vendor crediting, code of conduct, or similar requirements imposed by Buyer upon any of its vendors or suppliers.

16. DISCLAIMER OF CONSEQUENTIAL DAMAGES; BUYER INDEMNITY. Buyer acknowledges, agrees and understands that Seller shall not be liable for, or under any circumstances, be responsible for any special, incidental, or consequential damages, losses or expenses, including but not limited to, any indemnification, remedy or warranty, arising directly or indirectly from the sale of any Product, and Buyer agrees to use all due care and skill in the use of the Products and to use the Products solely for the purposes for which they are intended and as shown to Buyer by Seller.

17. Entire Agreement; Assent to and Acceptance of Terms of Sale. These Terms of Sale are the entire agreement of the parties and supersede all prior agreements between the parties. These Terms of Sale may be amended, modified, or supplemented only by a written agreement signed by both Buyer and Seller. Neither the failure of Seller to exercise, nor the delay in exercising, any right, remedy, or power provided by these Terms of Sale shall constitute a waiver thereof by Seller. No supplement, amendment or modification of these Terms of Sale shall be effective unless in writing and signed by an authorized representative of Seller.

18. LIMITATION OF LIABILITY. In no event shall Seller’s liability arise as a result of the sale of any Product or any related, exchangeable or other item, or any action taken or caused by Seller, whether the alleged cause of action be based on contract or negligence, or any other theory of liability, and in no event shall Seller be liable for any incidental, special, or consequential damages, or for any lost profits, or any economic losses, whether based on contract, negligence or any other theory of liability, or whether Seller’s liability is based upon Seller’s alleged failure to perform, Seller’s negligence, Seller’s failure to act, or any other cause.

19. Governing Law; Jurisdiction. These Terms of Sale are “forward contracts” and Buyer and Seller are “forward contract merchants,” as those terms are used in section 2-201 of the Uniform Commercial Code, as amended. In the event of a conflict between the terms and provisions of these Terms of Sale and the provisions of the Uniform Commercial Code, as amended, then the provisions of these Terms of Sale shall govern. The parties agree that these Terms of Sale are governed by the laws of the State of Ohio, without regard to its conflict of law provisions. All Claims. Buyer’s obligations hereunder will not be qualified by or subject to any vendor crediting, code of conduct, or similar requirements imposed by Buyer upon any of its vendors or suppliers.