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# National Gypsum Company & Its Subsidiary Entities

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## General Terms and Conditions of Sale

## INTRODUCTION AND GENERAL PROVISIONS

This publication sets forth the general sales policies of National Gypsum Company and its Subsidiary Entities (hereinafter, collectively, “National Gypsum Company” or the “Company”). For further details pertaining to specific product lines, contact your National Gypsum Sales Representative, Area Manager or Customer Account Specialist, or refer to current product literature.

These General Terms and Conditions of Sales (“Terms”), unless otherwise expressly agreed in writing by the Company, apply to every sale by the Company and are included in each acceptance by the Company of any customer’s offer to purchase. If a customer offers to purchase products from the Company with its own purchase order or similar form, any terms proposed therein which add to, vary from, or conflict with these Terms are objected to by the Company and expressly rejected, and shall not be a part of the contract of sale unless the proposed terms are accepted and approved in a written document referring specifically to such terms and signed by an authorized Company representative.

## QUALITY

The employees of National Gypsum Company are dedicated to achieving total customer satisfaction, by providing products and services which meet or exceed expectations. The end result of this process is to become the absolute lowest cost producer of the preferred products, quality, and service as defined by our customers.

To accomplish our goal, we are committed to a process of continuing personal improvement, striving always to do our job right the first time, and always striving to work harder, tougher, safer, smarter, and more creatively together.

## VISION & VALUES

National Gypsum’s Vision is to be recognized as the industry leader for extraordinary service and products that consistently meet our customers’ toughest standards. Driving and sustaining this Vision are our core Values:

- Customer Satisfaction as our priority.
- Honesty, integrity, fairness and respect.
- Communications and openness with all those with whom we deal.
- Teamwork, empowerment and continuous improvement.
- Work hard, be safe, and have fun.

## PRICING AND PAYMENT

All pricing is subject to home office approval. All products will be invoiced at the price in effect on the date of shipment, determined by the Company’s current price pages. The Company reserves the right to adjust its current prices to meet competition, but all price exception requests must be approved prior to the shipment of the product. National Gypsum Company reserves the right to cancel or remove price adjustments or exceptions which may have previously been made to meet a competitive offer, when in its judgment it becomes necessary or prudent to do so or the competitive situation no longer exists. **All pricing is subject to change without notice.** An effort will be made, however, to provide sufficient lead-time to our customers before a price is changed. Shipments made on or after the date of a price change will be invoiced at the new price.

Payment terms will be as stated on the face of each individual invoice, and cash discounts, if any, will be allowed only if taken within the time stated thereon, which shall be calculated from the invoice date. Payments not received by the net due date will be considered past due and could result in a suspension or cancellation of material and shipments.

The Company reserves the right without notice to apply and set off any amounts owed to customer, including but not limited to rebates, credits or complaint settlements, against any past due amounts owing from the customer to the Company.

If the Company brings legal action to collect past due amounts from a customer, the customer will be responsible to reimburse the Company for all of its costs and out-of-pocket expenses associated with such action, including but not limited to reasonable attorneys’ fees.

## ORDER ENTRY AND CREDIT

Orders are placed through your National Gypsum Customer Service Center, or with your National Gypsum Sales Representative. An order is accepted when acknowledged in writing or when shipped, whichever occurs first. All orders to be placed on credit are subject to the review and approval of the National Gypsum Company Credit Department. National Gypsum Company reserves the right to select its own customers. All customers must, upon request of National Gypsum Company, complete (and to update and supplement as the Company may reasonably require from time to time) a credit application on the Company’s standard form. All customers submitting such application agree to adhere to the terms and conditions stated therein. The Company reserves the right to reject any order if at any time National Gypsum Company deems the financial responsibility or condition of the customer placing any order to be unsatisfactory.

## PRODUCT AVAILABILITY

National Gypsum Company products fall into two categories:

1. Standard Products
2. Non-Standard Products

**Standard Products** are (A) “On Hand” or (B) “Special Order.” Standard Products are listed in the price pages and product literature. Availability of “Special Order” Products varies from plant to plant. Consult your National Gypsum Sales Representative or Customer Account Specialist for lead time, quantities, availability, and pricing.

**A Non-Standard Product** is any item that varies from the specification set forth in our product literature or price bulletin. Requests for Non-Standard Products must be made through the National Gypsum Sales Representative or Customer Service Center to obtain necessary approval, which will be subject to the following conditions:

1. Any change in the Non-Standard Product request automatically cancels the request and a new request must be submitted.
2. Orders for Non-Standard Products must be entered within 30 days after approval. Shipment must be completed within 30 days after date of manufacture.
3. **The order is non-cancelable.**
4. As a condition of manufacturing a non-standard product, National Gypsum Company reserves the right to ship, and the customer must agree to accept, an over-run or under-run not to exceed 5% of the final order.

## UNITIZING

National Gypsum Company has developed standard unitized packaging for most products. This packaging can vary by plant. These units permit us to standardize loading practices and optimize facilities, as well as meet loading requirements of carriers responsible for delivery of material. Deviations from standard unitizing requested by the customer must be minimized because of the additional expense that is incurred at the plant.

## REVISIONS/CANCELLATIONS

The Customer Service Center must handle revisions or cancellations of standard product orders. Notification must be received, prior to any actual loading, otherwise, the customer will be held responsible for payment.

## RECONSIGNMENT

Charges for reconsignment, diversion, driver assist unloading, detention, or demurrage assessed by the carrier in accordance with provisions of the carrier tariff will be charged to the customer when such instances are at "customer's request." The customer cannot reconsign shipments without prior approval by National Gypsum Company.

## METHOD OF SHIPMENT

1. Truckload—An order for one or more truckloads, in increments of full truckloads, of products shipped from a single plant.
2. Carload—An order for one or more rail cars, in increments of full carloads, shipped from a single plant.
3. Less than a truckload—An order for less than a truckload (LTL) of Products shipped from a single plant. Minimum release quantities are shown on the applicable price bulletin.
4. Customer pick-up.

In all cases, National Gypsum Company reserves the right of choice of carrier and routing. Additional costs incurred using a customer-specified carrier or routing will be charged to the customer.

## FREIGHT

Unless otherwise stated herein or approved by National Gypsum Company in advance, all shipments are F.O.B. National Gypsum's plant or other shipping point, freight prepaid. Upon request, shipments may be made on a freight collect bill of lading. The Company reserves the right to prohibit customer pickups where and when it deems it appropriate. At plants where customer pickups are allowed, shipment may be picked up either with no freight allowance or picked up with a freight allowance determined in advance of shipments. On LTL shipments, all freight will be charged to the customer in addition to the invoice price for the products, unless prepaid freight minimums are met. On all shipments, the title and risk of loss or damage to the goods pass to the customer upon delivery by National Gypsum Company to the carrier.

## TAXES

All taxes and excises of any nature levied by any governmental authority upon the sale, use or transportation of products covered by these Terms shall be paid and borne by the customer.

## MAXIMUM SHIPMENTS

All truckload and carload shipments will be loaded to the maximum allowable capacity.

## DELIVERY

We will make every reasonable attempt to meet a customer's request for a specified delivery date; however, we cannot ensure a specified time of day for delivery. National Gypsum Company will not be responsible for any failure or delay of delivery or other performance due to fire, floods, windstorms, labor difficulties, plant or equipment breakdowns, riots or civil commotions, explosions, war, or due to any other cause or causes beyond its control including US Department of Transportation and Federal Motor Carrier Safety Administration Driver Hours of Service Regulations.

## STOPOVER SHIPMENTS

A stopover shipment is a full truckload moving to a final destination with one or more stops in between. Stops must be on the most direct route from shipping plant to final destination. For distance restrictions, number of stops, and stopover charges, refer to specific product sales policy information.

## RETURNS

Requests to return products must be approved in advance by the applicable National Gypsum Company manufacturing plant. If the reason for the return is other than a timely claim under National Gypsum Company's Limited Warranty for the product, a 10% handling charge will be assessed (20% if the products are buy-for-resale), and the customer must pay all freight charges. Any return of products is also subject to inspection and acceptance at our plant. Any authorized credit adjustments will apply only if the product is returned in the same condition in which it was shipped. **Non-standard products are not returnable.** No credit will be given for unauthorized returns.

## SHORTAGE OR DAMAGE CLAIMS

The driver and customer must at the time of delivery, legibly sign and date the lower left hand corner of the Bill of Lading (BOL) "Customer" and "Carrier" Copy a/k/a Proof of Delivery (POD) or Delivery Receipt (DR). The customer must exclusively notate, legibly sign and date any exceptions to delivery and disposition in the lower right hand corner of both copies.

Shortage Notations: Specify the quantity actually received next to BOL quantity and circle it. Then specify the quantity and BOL product description of missing items and note them as "short".

Damage Notations: Specify the quantity; BOL product description; nature and location of damage, e.g., "20 pcs; 1/2"-4'x12' TE Reg; broken top outside edges; front right hand side of trailer"; etc. Customer notations should **not** express an opinion as to the cause of any damage or shortage but, only describe what is observed as clearly as possible. Opinions as to the cause of any damage or shortage may jeopardize the customer's or National Gypsum Company's claim rights against the carrier.

Shortage or damage should be immediately reported to National Gypsum Company's Customer Service Center and the notated Delivery Receipt (DR) must be faxed to a Customer Account Specialist. The customer must reject all damaged product to the carrier, which to the extent not prohibited by law or agreement, has salvage rights and is entitled to take possession and sell for

salvage any damaged product for which it will be expected to pay the invoiced value on a Shortage or Damage Claim. Only the damaged portion of a shipment can be rejected.

**Disposition Notations:** Specify the final disposition of the damaged product, e.g., “rejected to carrier”; “carrier to retrieve product within a mutually acceptable time frame”; “carrier waived salvage rights and product was scrapped”. Under no circumstances will a claim be allowed if a customer disposes of product which has been damaged in transit without the carrier's advance approval and no product will be returned to a National Gypsum Plant without prior authorization.

Claims of transit damage, concealed or otherwise, after delivery on a Bill Of Lading (BOL) "Carrier" Copy a/k/a Proof of Delivery (POD) or Delivery Receipt (DR) signed free and clear of exceptions will not be allowed.

Proper notation of exceptions to delivery and disposition may result in a **Customer Settlement**, which effectively assigns the customer's claim rights against the carrier to National Gypsum Company, which will in turn file a Shortage or Damage Claim with the carrier.

## QUALITY CLAIMS

After delivery and acceptance of the product, if any product quality complaint exists:

1. The customer must immediately notify the National Gypsum Sales Representative or Customer Account Specialist. The customer must safeguard the product prior to its inspection by National Gypsum Company.
2. Product claimed to be defective, off quality, or substandard must not be used or sold by the customer.
3. If needed, the National Gypsum Company Sales Representative will arrange for an on site inspection, obtain the facts, and discuss the results with the customer.

## LIMITED WARRANTY AND REMEDIES

Products manufactured and sold by National Gypsum Company are warranted by National Gypsum Company to its immediate purchaser to be free from defects in materials and workmanship at the time of shipment. **THIS EXPRESS WARRANTY IS THE ONLY WARRANTY APPLICABLE TO SUCH PRODUCTS, AND IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS ORAL OR WRITTEN WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

National Gypsum Company will not be liable for any incidental, indirect or consequential losses, damages, or expenses. The customer's exclusive remedy for any type of claim or action for defective products will be limited to the replacement of the products (in the form originally shipped) or, at National Gypsum Company's

option, to a payment or credit not greater than the original purchase price of the products.

National Gypsum Company will not be liable for products claimed to be defective where the defect resulted from causes not within National Gypsum Company's control, or which arose or occurred after shipment, including but not limited to accidents, misuse, mishandling, improper installation, contamination or adulteration by other materials or goods, or abnormal conditions of temperature, moisture, dirt, or corrosive matter.

Any claim that products sold by National Gypsum Company were defective or otherwise did not conform to the contract of sale is waived unless the customer submits it in writing to National Gypsum Company within thirty (30) days from the date the customer discovered or should have discovered the defect or non-conformance. No legal action or proceeding complaining of goods sold by National Gypsum Company may be brought by the customer more than one year after the date the customer discovered or should have discovered the defect or problem of which it complains.

## TECHNICAL ASSISTANCE

Material Safety Data Sheets (MSDS) are prepared in accordance with OSHA (Occupational Safety and Health Administration) requirements. MSDS are available and disseminated via National Gypsum Company Home Page [www.nationalgypsum.com](http://www.nationalgypsum.com), our national sales force, manufacturing facilities, research center, and national headquarters. For assistance in obtaining MSDS and technical data for the most effective use of National Gypsum Company's products, customers are encouraged to contact 1-800-NATIONAL. Customers may also contact Director, Quality Services, National Gypsum Company, 2001 Rexford Road, Charlotte, NC 28211, Phone: 704-365-7543.

## MISCELLANEOUS

National Gypsum Company reserves the right to change any provision of these General Terms and Conditions of Sale at any time, without prior notice.

These General Terms and Conditions of Sales do not create a distribution relationship or contract, exclusive or otherwise, nor will such a relationship or contract be inferred from any course of dealing between National Gypsum Company and any of its customers who purchase products under these General Terms and Conditions of Sale. National Gypsum Company and any customer who purchases products from it are each free without penalty to cease doing business with the other at any time, for any reason whatsoever and without notice, unless otherwise provided in a separate, written contract signed by an officer of National Gypsum Company and of the particular customer.

National Gypsum Company is an Equal Opportunity Employer, M/F/H.

