



PURCHASE AND SALES AGREEMENT

THIS PURCHASE AND SALES AGREEMENT (this "Agreement") is entered into as of June 1, 2019 by and between **GP GYPSUM LLC**, a company with principal offices located in Atlanta, Georgia USA ("GP"), and **TERMOTEX, S.A.**, a company with principal offices located in Panama ("TERMOTEX").

WITNESSETH:

WHEREAS, GP is engaged in the business of manufacturing, marketing and selling various Dens® brand gypsum panels (as manufactured by GP, the "Products"); and

WHEREAS, TERMOTEX desires to purchase and receive from GP the Products for use by TERMOTEX solely in its steel framed construction projects in Panama (the "Territory"); and

WHEREAS, GP desires to sell and deliver to TERMOTEX the Products solely for such internal use upon the terms and conditions set forth herein;

NOW THEREFORE, for and in consideration the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **ENTIRE AGREEMENT:** This Agreement is between GP and TERMOTEX regarding the sale by GP, and purchase by TERMOTEX, of Products for use by TERMOTEX in the Territory, and supersedes all prior agreements, proposals and discussions between the parties with respect to the subject matter hereof. Any additional, inconsistent or different terms or conditions contained in either party's purchase order, invoices, confirmations or other documents or correspondence submitted to the other party at any time, whether before or after the date hereof, with respect to the subject matter hereof shall be deemed a material alteration and not a rejection of this Agreement and are hereby expressly rejected by each party.
2. **TERM:** This Agreement shall commence June 1, 2019 and continue in effect through December 31, 2020 (the "Initial Term"), unless earlier terminated as provided herein. Upon the expiration of the Initial Term, this Agreement shall continue in effect unless and until terminated by either party upon at least ninety (90) days' prior written notice to the other party; provided, in no event shall any such termination be effective during the Initial Term.

The Initial Term and any such extension thereafter are collectively referred to herein as the "Term." Notwithstanding the foregoing, either may terminate this Agreement if the other party breaches or fails to materially comply with the terms and conditions of this Agreement and does not cure such breach or failure within thirty (30) days after written thereof. The provisions of this Agreement shall continue to apply to any Products purchased by TERMOTEX during the period prior to the effective date of termination.

3. PURCHASE AND SALE OF PRODUCTS:

(A) The sale and purchase of Products between the parties shall be accomplished by means of orders for Products, which shall be governed by the terms of this Agreement.

(B) All Products purchased by TERMOTEX pursuant to this Agreement shall be used solely by TERMOTEX in its steel framed construction projects in the Territory. Unless otherwise agreed by GP, in no event shall TERMOTEX resell Products purchased under this Agreement to any other person or entity.

(C) TERMOTEX agrees to purchase from GP a minimum of (i) 500 MSF (*i.e.*, 500,000 square feet) of Products during the period June 1, 2019 through December 31, 2019; and (ii) 1,000 MSF of Products during calendar year 2020 (for each such period, the "Minimum Quantity"). If TERMOTEX fails to purchase the Minimum Quantity in any such period, GP may immediately terminate this Agreement.

(D) Nothing in this Agreement is intended or shall be construed to create or establish an agency, partnership, or joint venture relationship between the parties hereto.

4. **PRICES:** The purchase price for the Products shall be as quoted by GP from time to time in connection with each purchase order. Unless otherwise expressly specified in writing by GP, all prices are exclusive of taxes, customs, duties and any and all current or future tax or governmental charge applicable to the sale, delivery, shipment or storage of the Products that GP is required to pay or collect, which shall be added to the price.
5. **PAYMENT TERMS; CREDIT REQUIREMENTS:** Pending credit approval and except as otherwise specified in writing by GP, the initial terms of payment are cash in advance in U.S. currency. TERMOTEX's credit application and financials will be reviewed in good faith and GP will attempt to move TERMOTEX to credit terms. After credit terms have been given, in the event that GP determines, at any time in its sole and absolute discretion, that the credit of TERMOTEX is or becomes impaired, GP shall have the right, among any other rights provided by applicable law, to declare immediately due and payable any and all amounts owed by TERMOTEX to GP, whether under this Agreement or otherwise, and to suspend and/or terminate further production, shipment, and delivery to TERMOTEX of any order, whether under this Agreement or otherwise, until credit arrangements satisfactory to GP in its sole judgment have been established.
6. **DELIVERY; TRANSFER OF TITLE:** Except as otherwise mutually agreed by the parties, the delivery terms shall be CFR CFR Puerto Manzanillo, Panama (Incoterms 2010) in full 40' HC Containers. Title to the Products shall pass from GP to TERMOTEX at the port of shipment once the Products have been loaded on board vessel for carriage.
7. **REJECTION OF NON-CONFORMING PRODUCTS:** Unless otherwise set forth in a limited warranty or full warranty provided by GP, rejection of non-conforming Products must be made by TERMOTEX in writing within fifteen days of receipt, and all defects ascertainable at time of giving notice shall be stated with particularity or deemed waived; provided, GP's limited warranties for the Products as referenced in **Section 9** below shall survive inspection and acceptance by TERMOTEX. In event of any complaint, shipment shall be held intact pending investigation by GP, and specification of objections, accompanied by tally of objectionable Products, shall be submitted directly to GP. Under no circumstances are Products to be returned to the GP unless TERMOTEX has written permission of GP to do so. TERMOTEX shall pay all undisputed amounts regardless of any claims outstanding.
8. **COMPLIANCE WITH LAWS:**

(A) GP and TERMOTEX shall each comply with all applicable laws affecting or relating to their respective operations and obligations under this Agreement.

(B) Without limiting the obligations in **Section 8(A)** above, TERMOTEX agrees not to divert or resell any Products contrary to the export control and antiboycott laws of the United States of America.

(C) The parties understand and agree that they will comply with all applicable anti-bribery and anticorruption laws, regulations, rules and requirements including the United States Foreign Corrupt Practices Act ("FCPA"), the laws, regulations, rules and requirements of the Territory, and any other applicable laws, regulations, rules and requirements. In accordance with this understanding, TERMOTEX represents that it, and each of its owners, directors, officers, employees, and every other person acting on its behalf, has not and will not, in connection with any business transactions involving GP or its Products, directly or indirectly,

(i) Offer, promise, authorize or make any payments of money or anything of value to any Government Official or to any agent or intermediary for further payment to any Government Official, (a) to influence the acts or decisions of such Government Official, (b) to induce the Government Official to do or omit to do any act in violation of a lawful duty, (c) to obtain any improper advantage, or (iv) to induce the Government Official to use his or her influence in order to affect any government act or decision, in order to obtain, retain, or direct business to any person or entity; or

(ii) Otherwise offer, promise, authorize or pay any illegal bribe, kickback or other payment in violation of any applicable law; this prohibition includes "Facilitation Payments."

(D) For purposes of this Agreement, a "Government Official" includes any appointed, elected, or honorary official or any career or other employee of any non-U.S. national, regional or local government or of a public international organization; any non-U.S. political party or party official; any candidate for non-U.S. political office, in any country, or instrumentality thereof. The term "government" includes any agency, department, embassy or other government entity or instrumentality. It also includes any company or other entity owned or controlled by the government, in whole or in part. A person does not cease to be a Government Official by purporting to act in a private capacity or by the fact that he or she serves without compensation.

(E) Should GP reasonably and in good faith believe that there may have been a breach of any representation, warranty or covenant of this **Section 8**, TERMOTEX shall cooperate in good faith with GP to determine whether such a breach has occurred. If GP determines reasonably and in good faith that there has been a breach of any such representation, warranty or covenant, GP shall have the right unilaterally to terminate this Agreement immediately and/or to take other appropriate action in accordance with the terms of this Agreement. In addition, in the event a violation has occurred, TERMOTEX shall defend, indemnify and hold harmless GP against any and all claims, liabilities, penalties, damages, losses, expenses and other costs arising from such violation.

(E) TERMOTEX will keep complete and accurate books and records with respect to this Agreement, including records of all payments to third parties, in accordance with generally accepted accounting principles.

(F) TERMOTEX agrees that GP has the right to audit or review TERMOTEX's books and records, upon reasonable notice, for anti-corruption compliance from time to time, and TERMOTEX agrees to make its books and accounting records relating to this Agreement available for GP's audit or review at GP's request.

9. WARRANTY: All Products supplied by GP shall be subject to GP's limited warranties for such Products as published from time to time on GP's website (www.buildgp.com/warranties). EXCEPT AS SPECIFICALLY SET FORTH IN THE EXPRESS LIMITED WARRANTY PROVIDED BY GP, GP DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF OR AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Where applicable law does not permit the disclaimer of any implied warranty or condition, the duration of such implied warranty or condition shall be limited to the minimum legal duration for such implied warranty or condition under applicable law.

10. LIMITATION OF LIABILITY: UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THE APPLICABLE LIMITED WARRANTY PROVIDED BY GP, (A) THE SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY NATURE ARISING FROM THE FAILURE OF THE PRODUCTS TO CONFORM TO THE APPLICABLE WARRANTY SHALL BE LIMITED TO REPAIR, REPLACEMENT OR REFUND OF PURCHASE PRICE (AT GP'S OPTION), AND (B) IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR

OTHERWISE), SHALL GP'S CUMULATIVE LIABILITY TO TERMOTEX OR ANY THIRD PARTY EXCEED THE PURCHASE PRICE FOR THE SPECIFIC PRODUCTS GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. IN NO EVENT SHALL GP'S LIABILITY INCLUDE INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, COST FOR LABOR, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE, AND COST OF CAPITAL.

11. EXCUSE OF PERFORMANCE: The parties will be excused from their respective performances hereunder (except TERMOTEX's payment obligations) if performance is prevented or delayed due to acts of God, war,

terrorism, riot, fire, labor trouble (including strikes, lockouts and labor shortages), failure of computer systems to operate properly, destruction or loss of electronic records or data, plant shutdowns, unavailability of materials or components, unavailability of or delays in transportation, insufficient production capacity, unavailability or shortage of fuel products, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond such party's reasonable control. If such event affects GP, GP may, without liability, allocate and distribute the Products among such customers in such proportions as GP, in its sole discretion, determines.

12. **NOTICES:** All notices required to be given hereunder shall be in English and shall be deemed to be properly given if sent by email or by an internationally recognized carrier (such as FedEx or UPS), in each case addressed as follows, or to such other address as either party may designate by like notice to the other party:

<u>If to GP:</u>	<u>If to TERMOTEX:</u>
GP Gypsum LLC 133 Peachtree Street, NE Atlanta, GA 30303 Attention: Director - Export Email: Alison.Taffel@gapac.com	TERMOTEX, S.A Parque Industrial de Las Américas, Super Manzana 11, Zona Franca Las Américas, Galera G. Pacora. Panamá Attention: Presidencia- Email: presidencia@termotexsa.com
And with a copy to:	
Georgia-Pacific LLC 133 Peachtree Street, NE Atlanta, GA 30303 Attention: Gypsum Division Counsel Email: jingram@gapac.com	

13. **GOVERNING LAW; SEVERABILITY:** This Agreement shall be governed by the laws of the State of Delaware, USA, without reference to the choice of law, conflicts of law, or principles of any other state or country which might otherwise be applied. The 1980 United Nations Convention on Contracts for the International Sale of Products does not apply to this Agreement. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall use their best efforts to substitute a valid, legal and enforceable provision, which, insofar as practical, implements the purpose of this Agreement.

14. **SURVIVAL:** The terms of this Agreement which, by their nature, would extend beyond the expiration or earlier termination of this Agreement (including, without limitation, **Sections 8, 9, 10, 12 and 13** hereof) shall survive any such expiration or termination.

15. **MISCELLANEOUS:**

(A) GP may assign this Agreement, in whole or in part, and whether by operation of law or otherwise, to an affiliate, subsidiary or successor in interest to substantially all of GP's business which is responsible for the performance of this Agreement. Except as otherwise specifically provided in this paragraph, GP and TERMOTEX may not assign this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other party. Any assignment except as permitted herein shall be null and void.

(B) No modification or waiver of any provisions of this Agreement will be valid unless the same is in writing and signed by an authorized representative of the party against whom the modification or waiver is sought to be enforced.

(C) This Agreement may be executed in counterparts and delivered by facsimile or other electronic communication, including .pdf file, which together shall constitute an original and one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth herein.

GP GYPSUM LLC

By: _____
Name: _____
Title: _____

TERMOTEX, S.A

By: 
Name: ANDREZ CASANOVA SILVA
Title: PRESIDENT