PLAINTIFF'S EXHIBIT

KG-225

TECHNICAL BULLETIN

KAISER GYPSUM

DATE: September 1969 BULLETIN NO. 226-D

KAISER FIRE-RATED ACOUSTICAL PRODUCTS

DESCRIPTION

Kaiser Fire-Rated Acoustical Products are manufactured by a new wet felting process using mineral wool fibers felted together and pressed into a rigid acoustical panel. Acoustical products made with this process provide a product which offers an excellent resistance to fire when used in certain floor-ceiling assemblies. In addition, the product has an excellent resistance to sound transmission, has high sound absorption, is incombustible, and is a strong, dimensionally stable acoustical product. The exposed painted surface is provided with a choice of patterns for decorative finish.

PATTERNS

Swirl Pin-Punched	Random punched perforated, approximately 1700 holes per sq. ft., 0.070" and 0.040" diameters.
Fissured	Fissured and random pin-punching.
Non-Directional Fissured	Non-directional fissured, perforated

SPECIFICATIONS

Pattern	Federal Specification
Swirl Pin-Punched	SS-S-118a, Type III, Pattern c, Class 25
Fissured	SS-S-118a, Type III, Pattern d, Class 25
Non-Directional Fissured	SS-S-118a, Type III, Pattern d, Class 25

STANDARD THICKNESSES, SIZES, AND JOINTS - All patterns

1/2" x 24" x 48" (nominal) - square edges
5/8" x 24" x 48" (nominal) - square edges
5/8" x 24" x 24" (nominal) - square edges
5/8" x 12" x 12" - T&G edges

FINISH

White washable, Class A (incombustible)

LIGHT REFLECTION

Class a (over .75)

FIRE HAZARD CLASSIFICATION (FLAME SPREAD)

Underwriters' Laboratories, Inc.

Flame Spread	20
Fuel Contributed	20
Smoke Developed	5

FIRE RESISTANCE CLASSIFICATION

Underwriters' Laboratories, Inc.

1/2" Lay-in	Design 23 - 1 hr.
5/8" Lay-in	Design 23 - 1 hr. and Design 88 - 2 hr.
5/8" Tile	Design 96 - 2 hr.

KAISER GYPSUM COMPANY, INC.

TERMS AND CONDITIONS OF SALE

In the event Buyer's purchase order states terms additional to or different from these Terms and Conditions of Sale, then Seller's acknowledgment in accordance with the terms hereof shall be deemed a notification of objection to such additional and/or different terms, or in the event such purchase order expressly limits acceptance to the terms the Seller's acknowledgment in accordance with the terms hereof shall be deemed a rejection of Buyer's offer to purchase, and in either event Seller's acknowledgment shall constitute an offer to sell which may be accepted only in accordance with its terms and without modification, addition or alteration. **THE FAILURE OF BUYER TO DELIVER NOTIFICATION OF OBJECTION TO THESE TERMS AND CONDITIONS OF SALE WITHIN A REASONABLE TIME SHALL BE DEEMED AN ACCEPTANCE THEREOF AND A CONTRACT SHALL BE FORMED ONLY UPON SUCH TERMS AND CONDITIONS OF SALE.**

1. **PRICE.**

The prices of Seller's products are subject to adjustment with respect to the Seller's prices in effect at the time of each shipment. Said prices do not include sales, excise or other taxes, payable on or with respect to the transaction and all taxes or amounts which are or hereafter become applicable to the transaction and all amounts so shown shall be added to the prices quoted and shall be paid by the Purchaser.

2. **TERMS OF PAYMENT**

Cash discount where applicable will be stated on each individual invoice and will be allowed only if paid within the time stated thereon, and provided there are no past due items. Otherwise all invoices will be payable to the Purchaser on or before the last day of the month in which such discount would have been allowed as stated on the face of the invoice. Overdue accounts will bear interest at the rate of one percent (1%) PER ANNUM on the unpaid balance from the date due. Purchaser's payments on account shall be applied first against accrued interest. Purchaser agrees to pay all collection costs, including reasonable attorney's fees.

3. **CREDIT**

All orders are subject to approval and acceptance by the General Sales Office of the Seller. Seller reserves the right to reject any order, or any of the terms thereof, at any time. Seller may withdraw any credit granted Purchaser and may require payment in advance or cash on delivery or other security for payment if circumstances will be present by good reason. If Purchaser fails to comply with the terms of payment or with any other term of sale, Seller shall have the right to withhold further deliveries or to cancel the unfilled portion of any order, and all unpaid accounts shall thereupon become due and payable without prejudice to any claims for damages Seller may be entitled to make.

4. **DELIVERY AND SHIPMENT**

A. All [illegible] pass to Purchaser upon delivery to carrier at the shipping point and such delivery shall constitute delivery to Purchaser. In order to secure Purchaser's performance under this contract and to secure payment for the same, Seller shall have a security interest in the goods until the purchase money security interest is duly perfected under the California Commercial Code § 9107 in which goods described herein and the proceeds thereof. Information concerning said security interest may be obtained from Seller at 300 Lakeside Drive, Oakland, California Attention Credit Manager.

B. Weights of shipments will be the minimum as published by Seller subject only to correction for gross error. [illegible] as published or established in applicable freight tariff. Shipment shall be made either by rail or motor carrier as requested by Seller's customer in the event Buyer's order fails to specify the mode of transportation or specifies a mode which has been excluded by Seller's carrier. Switching charges, demurrage charges, diversion charges and any other charges incurred in the process will be paid by Purchaser. Seller reserves the right to specify the point of origin of any shipment. Seller reserves the right to specify the point from which shipment is to be made. Where Seller approves the request for any special mode of transportation or routing of shipment, any excess charges resulting therefrom shall be for the Purchaser's account. Except where otherwise specified herein, weights of shipments shall be determined by reference to carrier's receipt for such shipment at Seller's shipping point.

5. **GENERAL LIABILITY**

Except where [illegible] Seller's liability on account of any breach of warranty, failure to make delivery, or any other cause or occurrence, including Seller's own negligence, shall be limited to the purchase price allocable to the goods or services with respect to which such breach or failure occurs. Seller shall not be liable for loss of profits or for any special, indirect or consequential damages. Seller shall not be liable for any failure of performance or delay in performance due to causes beyond Seller's control and without Seller's fault or negligence, including, but not limited to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, or other acts of God or nature, sabotage, landslides, explosions, accidents, damage to or breakdown of any kind of Seller's equipment or facilities, shortages of labor, materials or supplies from any cause whatsoever, delays of carriers, or failure of usual means of supply of materials, equipment or transportation. In the event of interruption, failure or impairment due to all or any of the foregoing causes, Seller may allocate its production and deliveries among its customers as it may determine in its sole discretion, and may also curtail or terminate any or all of its then existing contracts, in whole or in part, without liability to Purchaser. Seller's obligations are subject to the condition that all governmental approvals, consents, licenses, authorizations, permits, allocations and quotas necessary or advisable in connection with the production, sale or transportation of the goods are obtained and remain in effect. Seller shall not be liable for any failure of or delay in performance due to causes beyond Seller's control and without Seller's fault or negligence, including, but not limited to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, or other acts of God or nature, sabotage, landslides, explosions, accidents, damage to or breakdown of any kind of Seller's equipment or facilities, shortages of labor, materials or supplies from any cause whatsoever, delays of carriers, or failure of usual means of supply of materials, equipment or transportation. In the event of interruption, failure or impairment due to all or any of the foregoing causes, Seller may allocate its production and deliveries among its customers as it may determine in its sole discretion, and may also curtail or terminate any or all of its then existing contracts, in whole or in part, without liability to Purchaser. Seller's obligations are subject to the condition that all governmental approvals, consents, licenses, authorizations, permits, allocations and quotas necessary or advisable in connection with the production, sale or transportation of the goods are obtained and remain in effect.

6. **WARRANTY**

A. Seller warrants for a period of [illegible] that the products sold by it hereunder are free from defects in materials or workmanship at the time of shipment. **EXCEPT FOR SUCH EXPRESS WARRANTIES, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND OTHER WARRANTIES OF WHATEVER KIND, ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.**

Seller shall have the right, at its sole option, to replace or repair any defective products, to refund the purchase price or to grant a reasonable allowance on account of such defect and in any event Seller's liability for defective products shall be limited to the extent expressly hereinafter provided in paragraph 8A hereof.

B. **SELLER ASSUMES NO LIABILITY FOR ANY FAILURE OF PURCHASER'S SPECIFICATIONS TO MEET PURCHASER'S REQUIREMENTS.**

7. **INSPECTION.**

Purchaser shall inspect Seller's products before or upon receipt of delivery and, for any reason, Seller's products are unsuitable or unsatisfactory, Purchaser shall notify Seller before installation is commenced. Seller shall not be liable for any claims made after the commencement of installation.

8. **CLAIMS.**

A. Any claims or exceptions by Purchaser for defective products must be in writing within 30 days after Purchaser's receipt of shipment and all claims [illegible] in addition is commenced and Purchaser shall grant Seller an opportunity to investigate. **SELLER IS FURNISHING BASIC PRODUCTS AT STANDARD PRICES AND IS NOT INSURING PURCHASER AGAINST POSSIBLE CONSEQUENCES OF ERROR, OMISSION OR NEGLECT IN FABRICATION OR DELIVERY, EXCEPT FOR BREACH OF THE EXPRESS WARRANTIES SPECIFIED IN PARAGRAPH 6A ABOVE. SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE ON ACCOUNT OF ANY INCORRECTIONS OR NONCONFORMING SPECIFICATIONS OR OTHER DEFECT REGARDING THE QUALITY, VALUE, OR SUITABILITY FOR ANY PURPOSE OF ANY PRODUCT SOLD HEREUNDER WHETHER CAUSED BY SELLER'S NEGLIGENCE OR OTHERWISE BEYOND WHAT SELLER SHALL BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR CONTINGENT DAMAGES OR ANY OTHER CLAIM OR DEMAND WHATSOEVER EXCEPT TO THE EXTENT OF THE PURCHASE PRICE OF THE PRODUCT THE RETURN OF WHICH SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER. PURCHASER ASSUMES ALL RISK OF LOSS, DAMAGE OR DELAY INCIDENT TO THE FURNISHING OF ANY PRODUCT BY SELLER HEREUNDER, OR THE OBLIGATION THEREOF, EXCEPT TO THE EXTENT EXPRESSLY ABOVE PROVIDED.**

B. In claim an allowance for transportation overcharges, Seller's original paid freight bill shall be attached to the Purchaser's [illegible].

C. Seller shall have no responsibility to make any claim for [illegible] or injury to shipments caused by the carrier or other [illegible] Seller's shipping point. Any claim by Purchaser against Seller for damage or shortage in transit prior to such delivery must be made within five days after receipt of shipment and accompanied by proper documentation issued by carrier stating that carrier received material [illegible] in the condition claimed.

9. **STOCK OR NONSTOCK MATERIALS.**

In the case of special or [illegible] materials, Purchaser's cancellation will not be accepted with respect to finished items and items within 30 days of completion and on other items at the option of manufacturer the agreed [illegible] shall be the percentage of completion as applied to the purchase price. When unprocessed materials only is involved, the cancellation charge shall be the cost of the material plus 10%.

10. **MISCELLANEOUS CONDITIONS**

A. The waiver by Seller of any term, provision or condition herein stated shall not be construed to be a waiver of any other term, condition or provision hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision, nor shall it be deemed a waiver of any conditions in any subsequent order.

B. Purchaser may not cancel or modify any order in respect to the privilege of making any changes in specification except in writing and with the express consent of Seller and subject to such conditions as will save Seller harmless from any loss by reason thereof. This acknowledgment constitutes the sole and entire agreement between Purchaser and Seller and none of the terms and conditions contained herein may be added to, modified or altered except by a written instrument signed by Seller. No one has any oral authority from us to make statements or representations relative to the order which are not fully expressed herein.

C. The laws of the State of California shall govern the validity, interpretation and enforcement hereof.