

Terms and Conditions of Sale

1. **Definitions.** "Seller" shall mean Kronospan, LLC. "Buyer" shall mean the party purchasing goods, materials, supplies, tools, facilities, equipment and machinery ("Goods") pursuant to these Terms and Conditions ("Terms and Conditions") as identified herein.

2. **Governing Document.** These Terms and Conditions represent the sole governing document between Seller and Buyer for Seller's products and supersede all previous terms and conditions, except where expressly indicated in writing by Seller.

3. **Acceptance of Orders.** All orders must be in writing and accepted by a specific designee of Seller. All sales are subject to and expressly limited to, the terms and conditions stated herein and any other agreement between the parties whether written or verbal with respect to the subject matter hereunder shall be null and void. Buyer hereby gives notice that it objects to and rejects any terms or conditions contained in any document which has been or may in the future be supplied by Seller to Buyer which are in addition to, different from, inconsistent with or attempt to vary any of these Terms and Conditions, whether such terms or conditions are set forth in Buyer's order, order acknowledgement, acceptance, confirmation, invoice or otherwise (other than typed or handwritten provisions on the face of an order specifying the products, quantities and order dates), unless accepted in writing by an authorized representative of Seller. No modification or alteration of any provision hereof shall result from Seller's acknowledgment of Buyer's purchase order, shipment of material or other affirmative action by Seller toward performance hereunder following receipt of Buyer's purchase order, shipping order or other forms containing provisions, terms or conditions in addition to or in conflict or inconsistent with the provisions hereof. Acceptance by Buyer of Goods covered hereunder shall be deemed Buyer's agreement to these terms and conditions. The terms and conditions of this Agreement will apply to each order accepted or delivered by Seller hereunder.

4. **Payment.** Unless otherwise agreed to in writing, terms shall be net thirty (30) days, F.O.B. Seller's U.S.A. plant. Seller may withhold delivery of any Goods pending credit approval or advance payment, as may be required. Past due invoices will be subject to a late payment penalty. The penalty owed by buyer is equal to .05% per day of payment delay with percentage applied to the value of unpaid invoices. Buyer agrees to pay all collection costs and expenses, including reasonable attorneys' fees incurred by Seller in collecting or attempting to collect such account. Payment by the Buyer for the price of the order shall be a condition precedent to Buyer's right to assert any claim against Seller. Time is of the essence with respect to all payment obligations. If Buyer defaults payment on due date, the Buyer shall lose all claims to discounts, credit notes and bonuses. Kronospan reserves the right to repossess material not paid for in accordance with these terms and conditions.

5. **Taxes.** Unless otherwise stated herein, prices do not include sales, use, excise, personal property or any other and all such taxes applicable to the sale of the items hereunder, and shall be paid by the Buyer in addition to the prices specified herein. Buyer shall pay personal property taxes assessed on or after the date title passes to Buyer.

6. **Cancellation; Changes.** No order once accepted by Seller can be canceled by Buyer without Seller's written consent and then only upon payment to Seller of all losses and expenses, including lost profits for the entire order. Seller may cancel this order if (a) Buyer's payments are in default on this or any other order, or Buyer breaches any other material provision hereunder, (b) substantial changes occur in the availability of raw materials or components provided by third party vendors, (c) events beyond Seller's reasonable control as specified in Paragraph 8 make it impossible to secure shipment, (d) Buyer becomes insolvent or is the subject of the filing of a bankruptcy petition, or makes an assignment for the benefit of creditors or fails to pay its debts as they come due, or (e) Seller has reasonable belief that Buyer is insolvent or will not pay in accordance with the terms herein. Seller reserves the right to make product and design changes in Goods ordered which will not adversely affect form, fit or function requirements, with notification to or price approval by Buyer. All changes requested by Buyer in the process or design of Goods are subject to written approval by Seller and to reasonable changes in delivery and price as Seller determines is necessitated thereby.

7. **Warranty; Limitation of Liability.** Subject to the limitations set forth herein, Seller warrants its products to be free from defects in material and workmanship and warrants that they will conform to Seller published performance specifications at the time of shipment from the Seller's facility. Seller shall have the right to validate defects by inspection and to verify that such alleged deficiencies actually exist and were not caused by such use or misuse. This warranty is conditioned upon Buyer's (a) operating and maintaining the Goods in accordance with Seller's specifications and/or instructions, (b) not making any unauthorized repairs or alterations which affect the Goods, and (c) not being in default of any payment obligation to Seller. The foregoing warranty does not cover consumable or expendable goods or damage caused by negligent operation use or care of Goods by Buyer.

(b) **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF**

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM THE BREACH OF ANY OF THE TERMS HEREOF OR FROM THE SALE, HANDLING OR USE OF THE GOODS SOLD. SELLER'S LIABILITY HEREUNDER, IF ANY, FOR A BREACH OF THESE TERMS AND CONDITIONS OF SALE, INCLUDING NEGLIGENCE, IS EXPRESSLY LIMITED AT THE SELLER'S OPTION TO EITHER (A) TO THE REPAIR OR REPLACEMENT OF THE GOODS SOLD, OR (B) TO THE REFUND OR CREDITING OF THE PRICE OF SUCH GOODS ACTUALLY PAID.

(c) ALL CLAIMS HEREUNDER MUST BE MADE IN WRITING, BUT IN ANY EVENT RESERVES RIGHT TO REJECT CLAIMS NOT COVERED BY WARRANTY. SELLER ASSUMES NO LIABILITY FOR RESULTS FROM THE USE OF ANY GOODS FURNISHED.

8. **Returns.** Written authorization must be obtained from Seller prior to return of any items for repair or replacement or credit. Buyer's rights to repair or replacement are governed by the terms of Section 7 above. Issuance of credit for returned items shall be made at Seller's discretion upon Buyer's request. Buyer must inspect goods immediately and no rejection or revocation of acceptance shall be permitted more than ten (10) days after delivery or upon use by Buyer of the goods, whichever occurs first.

9. **Delays.** Seller shall not be responsible for any delays in filling orders and shall not be liable (in contract, tort, negligence or otherwise) for any loss or damages resulting from such delays, regardless of cause.

10. **Pricing.** All published prices and specifications are subject to change without notice. Prices quoted are for products only and do not include any other charges unless specifically covered on the face of the quotation.

11. **Specifications; Descriptions; and Drawings.** Subject to Section 7 above, all specifications, descriptions and drawings relating to the Goods are only being intended to serve merely as a guide and accordingly the Buyer shall not rely on them and the Seller shall not be liable for its accuracy. All drawings prepared by the Seller and the copyright therein shall remain the property of the Seller and shall be returned to it by the Buyer on demand by Seller. All such drawings shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Seller.

12. **Termination.** Should the financial responsibility of Buyer at any time become unsatisfactory to Seller, Seller shall have the right to suspend performance of any order or require payment for any shipment hereunder in advance or require satisfactory security or other adequate assurance satisfactory to Seller. If Buyer fails to make payment in accordance with the terms of this Agreement, or fails to take delivery, or fails to comply with any provisions hereunder, Seller may, at its option, in addition to any other remedies, cancel any unshipped portion of this order, Buyer to remain liable for all unpaid accounts.

13. **Delivery; Risk of Loss.** Title to goods shall pass to Buyer upon acceptance of Goods, but all risk of damage or loss shall pass to Buyer upon delivery of Goods by Seller to common carrier or other means of transportation (and Buyer shall be responsible for providing any insurance with respect to the Goods upon such delivery by Seller). Failure of Buyer to furnish Seller with shipping instructions shall in no way alter the terms of payment of Seller's invoice for any of the products offered for delivery. Freight charges may be added to invoice or billed separately. Each shipment hereunder shall constitute a separate sale. Seller reserves the right to make partial shipments, and failure to make one or more deliveries shall not constitute cause for cancellation hereof by Buyer. Buyer agrees to accept delivery of any part or all of the products on the mutually agreed upon delivery date. Any deferred delivery request by Buyer shall be subject to Seller's written approval. On any approved deferred delivery, Seller shall have the right to render invoice for the completed portion of the order and to warehouse all completed products at Buyer's expense and risk of loss. Furthermore, with regard to any uncompleted portion of the order, Seller reserves the right at its option to either make a cancellation charge on the same terms and conditions of payment as set forth in Section 6 herein or to revise its prices and delivery schedules on the uncompleted portion to reflect its increased costs, delays and expenses.

14. **Shortages; Damage.** Buyer shall give written notice to the Seller and the carrier within five (5) days after delivery of any shortage or damage, or failure to conform to the order, or in the case of non-delivery within fourteen (14) days after the expected delivery date.

15. **Failure to Take Delivery.** If the Buyer fails to take delivery of any Goods the Seller may, at its own discretion, store the Goods and take such reasonable steps as are necessary to ensure their safe-keeping pending actual delivery and the Buyer shall indemnify the Seller as to all the costs incurred by the Seller. Any such action by the Seller shall be without prejudice to its rights to terminate the contract at any time pursuant to Section 11. If the Buyer fails to collect or (as the case may be) take delivery of any Goods ordered when they are ready, then the Seller

reserves the right after four (4) weeks to deliver them to the Buyer at the Buyer's risk, or dispose of the Goods any other reasonable manner, in which case Seller shall remain liable to the Seller for it's the cost of the Goods, less the net amounts received by the Seller as a result of such disposal (after deducting Seller's costs of such disposal).

16. **Exporting Goods.** Buyer warrants and represents that it shall comply with all laws and regulations of the United States applicable to the export from the United States (including transshipment) of Goods purchased hereunder as may be in force and effect from time to time. Buyer shall obtain, at its expense, all requisite governmental licenses, permits and approvals for the export of such Goods.

17. **Patents.** Seller will defend at its expense any action brought against Buyer based on a claim that a product manufactured by Seller directly infringes a United States patent, provided that Seller is notified promptly and given full authority to defend such claim. If any good ordered by Buyer is manufactured according to designs or processes specified by Buyer, Buyer agrees to indemnify and save Seller, its affiliates, officers, agents and employees, harmless from any expense, loss, attorneys' fees, costs, damages or liability which may be incurred as a result of actual or alleged infringement of patent, copyright or trademark rights. Sale of goods under this agreement does not convey a license, implied or otherwise, under any patent, copyright or trademark right in which Seller has an interest, nor does it convey rights to trade secrets or any other proprietary information of Seller.

18. **Intellectual Property Rights of Seller.** The Buyer shall have no rights to any intellectual property owned by or licensed to the Seller other than (if applicable) the right to use or resell the Goods under any trade mark applied by the Seller. The Buyer shall not, without the Seller's prior written consent, allow any trade mark or any instruction or warning applied to the Goods to be obliterated or obscured. All know-how and other intellectual property relating to the Goods or their development or creation shall remain the Seller's property, shall be treated as confidential and shall not be copied, reproduced or disclosed to any person without the Seller's prior written consent.

19. **Confidentiality.** Buyer and its employees agree to maintain as confidential any Seller supplied proprietary information, regardless of form, and Buyer shall not disclose any such proprietary information to any other person or entity or use such proprietary information for its own purpose or benefit without Seller's written permission.

20. **Disputes.** All actions and proceedings brought by either party relating to or arising from, directly or indirectly, this Agreement shall be litigated either in the United States District Court for the Northern District of Alabama or an applicable state court in Calhoun County, Alabama. The parties hereby submit to the personal jurisdiction of such courts; hereby waive personal service of process and consent that any such service of process may be made by certified or registered mail, return receipt requested, directed to the appropriate party at its address last specified for notices hereunder.

21. **Indemnity.** The Buyer shall indemnify and hold harmless the Seller from and against all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, proceedings, claims and demands incurred by or brought against the Seller and arising directly or indirectly out of or inconnection with any breach of any of the Buyer's obligations under any contract with the Seller.

22. **Force Majeure.** Seller shall have no responsibility for, and shall incur no liability to Buyer for, any failure or delay of performance by Seller with respect to any obligation arising hereunder for such failure or delay directly or indirectly resulting from provisions of law, accident, explosion, fire, natural disaster, labor-management dispute, abnormal operating conditions, riot, war, terrorism, insurrection, interruption of power or communications, or inability to secure labor materials, production, or transportation facilities, or any other cause beyond Seller's control. If any contingency occurs, Seller may allocate or suspend production and deliveries among its customers as Seller, in its sole discretion, shall determine.

23. **Miscellaneous.** The headings used in these Terms and Conditions are for convenience only. The failure of Seller to insist in any one or more instances upon the performance of any of the terms or conditions herein, or to exercise any right hereunder, shall not be construed as a waiver of any other terms or conditions herein nor of the future performance of any term or condition or the future exercise of any such rights. The failure of Seller to require strict performance of any provision shall not diminish Seller's right thereafter to require strict performance of any provision. If any provision of these Terms and Conditions is found to be void by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect. These terms and conditions of sale (a) may not be amended orally or by any course of conduct by Seller or Buyer but may be amended only by a written agreement executed by both Seller and Buyer, (b) shall be binding upon and inure to the benefit of Seller and Buyer and each of their legal representatives, successors and assignees; provided, however, that no right under these terms and conditions may be assigned by either party (c) shall be governed by and interpreted and construed in accordance with the laws of the State of Alabama. This Agreement may not be assigned or transferred by Buyer to any third party without written consent of Seller. Any notice required to be given shall be sent by Registered Mail, properly addressed, and signed by an authorized representative. The Seller's rights hereunder are in addition to any other rights which the Seller may have under law or equity.