

## TERMS AND CONDITIONS

**Definitions:** "Buyer" will mean the issuer of the Purchase Order that is a company directly or indirectly controlled by **Kronospan Inc.** "Seller" will mean that party furnishing goods, materials, supplies, tools, facilities, equipment and machinery ("Goods") and/or labor, services, and work ("Services") pursuant to this Purchase Order ("Purchase Order") as identified herein.

**Acceptance:** This Purchase Order shall be deemed accepted and shall be a binding contract for the sale of the Goods and/or Services upon the first to occur of the following events: (i) Seller or its agent executing and delivering the acknowledgement copy of this Purchase Order to Buyer; (ii) Seller shipping or delivering the Goods to Buyer; or (iii) Seller commencing the performance of the Services. The terms and conditions set forth in this Purchase Order shall constitute the sole and exclusive agreement between Buyer and Seller and this Purchase Order shall supersede all prior agreements or commitments, whether oral or written, with respect to the Goods and/or Services. Acceptance of this Purchase Order is expressly limited to acceptance of the terms and conditions set forth in this Purchase Order (including but not limited to terms related to billing and shipping). 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 the terms or conditions of this Purchase Order whether such terms or conditions are set forth in Seller's tender, proposal, order acknowledgement, acceptance, confirmation, invoice or otherwise. Buyer's acceptance of the Goods or Services shall not be construed as an acceptance of any terms or conditions contained in any such document supplied by Seller to Buyer. If this Purchase Order is deemed to be an acceptance of a prior offer by Seller, such acceptance is conditional on Seller's assent to all the terms and conditions set forth in this Purchase Order.

**Scope of Work:** The Seller agrees to provide all Goods and to perform all Services in good and workmanlike manner, free of any defects. The Goods and/or Services shall include all materials (which shall be new unless otherwise specified in writing by Buyer), supplies, equipment, services, machinery, tools and other facilities of every description required for the prompt and efficient execution of the Goods and Services specified herein.

**Adherence to Specifications:** Seller will make no changes and will be responsible for any deviation from the specifications that the Seller may make. Seller will also be required, at Seller's own cost and expense, to cause any of Seller's work to conform strictly to the specifications, unless Buyer provides a written authorization setting forth specifically in detail what changes may be made.

**Compliance with Applicable Laws and Regulations:** Seller warrants and agrees that all Goods and Services furnished hereunder shall comply with all applicable federal, state and local laws and regulations in force at the time of supply and/or performance including, without limitation, with all applicable occupational safety and health and environmental laws and regulations. Without limiting the generality of the foregoing, Seller shall have complete control and responsibility for the safety and health of its employees and agents while engaged in the performance of the Services at Buyer's place of business. Seller shall obtain all necessary permits and/or licenses and give all necessary notifications for the supply of the Goods and/or the performance of the Services. Seller shall indemnify, defend and hold harmless Buyer from any and all damages, costs and liabilities whatsoever arising out of Seller's failure in whole or in part to comply with applicable laws, regulations and ordinances.

**Payment:** Payment will be made within the stated Payment Terms on the Purchase Order after receipt of a written invoice provided: Seller is not in default under this Purchase Order; all work is completed for which payment is requested; Seller has provided Buyer with lien releases for all work performed by Seller and its subcontractors and/or suppliers of any tier (if applicable); and any applicable governmental agencies have accepted the work. No retention will be withheld unless noted otherwise in this Purchase Order. ANY AND ALL INVOICES SUBMITTED BY SELLER AFTER NINETY (90) DAYS FROM COMPLETION OF THE WORK WILL BE DEEMED WAIVED AND BUYER WILL HAVE NO OBLIGATION TO PAY OR OTHERWISE COMPENSATE SELLER FOR SAME.

**Additional Work; Waiver; Modifications:** No revision or modification of the terms and conditions of this Purchase Order shall be binding on Buyer unless such revision or modification is expressly accepted in writing by an authorized officer of Buyer. All conforming authorizations for additions, changes or modifications shall be attached to and made part of this Purchase Order upon written acceptance by Buyer. No waiver of any provision of this Purchase Order shall: (a) be binding unless given in writing and signed by an authorized officer or agent of the party to be bound thereby; or (b) imply a waiver of that provision for the future or of any other provisions in this Purchase Order unless the waiver expressly so states.

**Taxes and Permits:** The amount stated on the face of this Purchase Order is the entire amount that Seller will receive for this Purchase Order. All applicable sales or use taxes payable by Buyer shall be separately identified on the face of this Purchase Order. Any such taxes not so identified shall be deemed to be included in the total price. Seller is responsible to pay for all federal, state, local or other taxes required in connection with the Goods and/or Services. Any and all permits as required under this Purchase Order will be procured by the Seller at Seller's expense. Any and all required permits or licenses will be maintained by the Seller, as required by law.

**Inspection and Approvals:** The Goods and Services provided hereunder will be subject to inspection and approval by Buyer and any applicable governmental authorities. Seller will be required to furnish, for the approval of Buyer and any applicable governmental authorities, such samples, shop drawings and patterns as may be required for delivery of the Goods and/or Services. The Goods, including any materials included within the Goods and/or Services, rejected as not conforming to this Purchase Order will be returned at Seller's expense, including transportation and handling costs. Buyer's inspection or non inspection of materials or its receipt, possession or acceptance thereof or payment therefore, will not relieve Seller from any of Seller's obligations and warranties hereunder including, without limitation, any liability for any latent defects or damages.

**Warranties and Guarantees:** In addition to any other express or implied warranties, Seller expressly warrants that: (a) it has good and marketable title to all Goods furnished under this Purchase Order and the right to transfer title to such Goods to Buyer free of all liens and encumbrances; (b) all Goods supplied and/or Services provided shall be and be performed in accordance with all

applicable specifications, drawings, descriptions or samples furnished and in accordance with all other requirements of this Purchase Order and the representations of the Seller; (c) all Goods shall be of new and first class material and workmanship, shall be fit and satisfactory for the purpose for which they are intended, and shall be of merchantable quality; (d) all Goods and Services furnished shall be free from defect in material, design or workmanship; (e) all Services shall be performed in a workmanlike manner and in accordance with the highest standards for such Services in the industry; (f) the goods and any services provided will comply with, all laws, rules, regulations and requirements of all governmental authorities having jurisdiction; (g) the Goods will be properly branded, labeled, tagged, marked and/or registered (if required) in accordance with all applicable laws, rules and regulations; and (h) the Goods do not and will not infringe upon or violate any patent trademark, trade name, copyright or any other rights of third parties. The foregoing warranties shall survive any inspection, delivery, acceptance or payment. Buyer shall be under no duty to inspect any of the goods prior to use or resale, and neither the use nor resale of any goods covered by this Purchase Order shall constitute a waiver of any of Buyer's rights, including rights to set-off, in whole or in part, against any sums payable to the Seller, whether arising under this Purchase Order or otherwise. Seller will assign to Buyer any and all rights under any warranty Seller may have received or was entitled to receive from vendors of the material and equipment incorporated into the work to the extent such warranties extend beyond the period of Seller's warranty hereunder.

**Remedies:** Seller shall promptly replace or correct defects in the Goods or Services not conforming to any warranty, without expense to Buyer, when notified of such non-conformity by Buyer. Alternatively, Buyer may reject or revoke acceptance, and cover by making any reasonable purchase of material in substitution for those rejected and the Seller will be liable to Buyer for any additional costs for such substituted material; or Buyer may proceed to correct Seller's nonconforming work by the most expeditious means available, and the costs for such correction shall be for Seller's account; or Buyer may retain the nonconforming material and an equitable adjustment reducing the order price to reflect the diminished value of such nonconforming material will be made by written revision. Seller's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties, including incidental damages, such as disassembly, removal, inspection, re-installation, re-testing, and costs of transportation and warehousing.

**Assignment:** Neither this Purchase Order or any interest under it will be assigned by Seller without the prior written consent of Buyer.

**Packing:** If applicable, all packing will be at Seller's expense in suitable containers for protection in shipment and storage. Packing must conform to requirements of carrier's tariffs.

**Claim for Delay or Damages:** Seller expressly waives any and all rights to make a claim or be entitled to receive any compensation for Buyer's, or Buyer's or Seller's other vendors, contractors or subcontractors, failure to have related portions of the work completed in time for Seller to proceed with its work.

**Delivery:** If applicable, deliveries are to be made both in the quantities and at the time specified by Buyer. Time is of the essence. Seller will be liable for any and all damages arising from delays caused in whole or in part by Seller or any of its principals, agents, employees, subcontractors of any tier or other related persons or entities. Notwithstanding any shipping arrangement specified in this Purchase Order, Seller shall have the risk of loss for all Goods shipped under this until receipt of delivery and acceptance of such Goods by Buyer at the specified location, at which time title to and the risk of loss with respect to such Goods shall pass to Buyer. Unless otherwise specifically set forth in this Purchase Order, the stated price shall include all duties, levies, freight charges, packing charges, insurance charges, installation charges and any other charges whatsoever in connection with the Goods and/or Services. Seller shall provide all properly completed customs invoices, declarations and evidence of export/import as well as such operating and maintenance manuals with respect to the Goods, as may be reasonably required by Buyer.

**Title:** Unless otherwise agreed upon, title to materials supplied pursuant to this Purchase Order will pass to Buyer upon delivery to the destination point. The price includes delivery of all materials F.O.B. freight and carriage prepaid to the destination point.

**Cancellation:** In addition to any other rights and remedies which it may have, Buyer may cancel the supply of the Goods and/or the performance of the Services or any part thereof because of Seller's failure to comply with any of the terms or conditions of this Purchase Order (including without limitation, for late delivery of Goods, late performance of Services, delivery of Goods which are defective or which do not conform with this Purchase Order, and failure to provide Buyer, upon request, with reasonable assurances of future performance, if Seller otherwise breaches the terms and conditions hereof, including, without limitation, Seller's warranties). In no event shall Buyer be responsible or liable for Seller's loss of actual or anticipated profits nor for any other indirect or consequential damage arising out of or relating to this Purchase Order or from the performance, suspension, termination or breach thereof, whether based upon principles of equity, contract, tort (including but not limited to negligence) or otherwise.

**Indemnity:** To the maximum extent permitted by law, Seller will indemnify, protect, defend and hold harmless Buyer, its subsidiaries, successors, partners, directors, officers, employees, agents, assigns, representatives, consultants, affiliates, and each of them (hereafter individually and collectively, the "Indemnitee") from and against any and all claims, liabilities, liens, demands, law suits, actions, losses, damages, injuries, judgments, settlements, costs or expenses whether asserted in law or in equity (hereinafter collectively, "Claims") made or asserted for any damages or injury of any kind or nature whatsoever to any person or property (including, without limitation, Claims for injury to or death of any employee of Seller, or subcontractors of any tier) including, without limitation, any such Claims resulting from, arising out of, or caused in whole or in part by any activity that arises, result from or relate to: (a) any breach by the Seller of any term, condition, covenant or warranty contained in this Purchase Order; (b) any defect in the Goods or Services (including defects in design) furnished pursuant to this Purchase Order; or (c) any act or omission of Seller or Seller's agents, officers, employees, suppliers or subcontractors in the course of furnishing the Goods and/or Services, whether or not such Claims are based upon actual or alleged active or passive negligence of Indemnitee, except that Seller will not be required to indemnify Indemnitee against Claims that are the result of the sole negligence or willful misconduct of Indemnitee, its agents, servants or independent contractors who are directly responsible to Indemnitee. Seller must provide a defense with counsel of Indemnitee's approval upon the first notice Indemnitee sends to Seller and continue to provide such defense until the matter is fully resolved by either judgment, settlement or other release executed by Indemnitee. Seller will indemnify Indemnitee from and against all Claims including without limitation, all legal fees, legal costs (including, without limitation, paralegal costs, secretarial costs, copy costs, phone costs, facsimile costs and mail costs) and expert fees and costs that Indemnitee may directly or indirectly sustain,

suffer or incur as a result thereof, and Seller agrees to and does hereby assume on behalf of Indemnitee the defense of any Claims which may be brought against Indemnitee by reason of such Claims and will pay on behalf of Indemnitee, upon their demand, the amount of any costs allowed by law, any costs identified herein, any settlement reached or any judgment that may be entered against Indemnitee or any of them, as a result of such Claims. Buyer will have the right to withhold from any payments due or that may become due to Seller, pursuant to this Purchase Order or otherwise, an amount sufficient to protect Indemnitee from such Claims including, without limitation, all legal fees, legal costs (including, without limitation, paralegal costs, secretarial costs, copy costs, phone costs, facsimile costs and mail costs) and expert fees and costs. The obligations of Seller pursuant to this Section will survive the expiration or termination of this Purchase Order.

**Confidentiality:** Buyer may disclose confidential information to Seller to enable Seller to perform its work. Seller will protect all information which may be disclosed between Buyer and Seller as confidential. Any specifications, designs, patterns, samples, plans or other similar items or other technical, commercial, or financial information relating to Buyer's business (the "Information") which Seller may obtain or which Buyer may in any way disclose to Seller in connection with this Purchase Order, shall be deemed to be confidential and Seller shall not use the Information for its own purposes (other than for this Purchase Order), and Seller shall not disclose the Information to any person or firm other than those that may be specifically authorized by Buyer in writing. Furthermore, Seller will not disclose the nature and purpose of its work to any third party other than those necessary for Seller to complete its work unless Buyer approves such disclosure in writing.

**Intellectual Property:** Seller shall indemnify and hold Buyer and its successors and assigns harmless against any and all claims, demands, damages, losses, expenses, costs (including legal fees) which may result because any of the Goods and/or Services or the use thereof infringe or are claimed to infringe on any patent, copyright, trademark, trade name, invention or process of manufacturing.

**Governing Law:** The terms and conditions of this Purchase Order shall be construed and interpreted in accordance with the laws of the State of Alabama. If any provision or provisions hereof shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

**Court Actions:** ALL DISPUTES ARISING OUT OF THIS PURCHASE ORDER AND THE GOODS AND SERVICES SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE ALABAMA STATE COURTS OF CALHOUN COUNTY OR, IN THE CASE OF FEDERAL JURISDICTION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, AND THE BUYER AND SELLER CONSENT TO THE PERSONAL AND EXCLUSIVE JURISDICTION AND VENUE OF THESE COURTS.