

## **1. Offer; Governing Provisions.**

This quotation or other document is an offer or counteroffer by Krones, Inc., a Wisconsin corporation ("Krones"), to sell to the buyer identified in this quotation or other document ("Buyer") the handling parts (the "Handling Parts") and/or spare parts (the "Spare Parts") described in it (the Handling Parts and Spare Parts together referred to as the "Parts") in accordance with these Terms and Conditions for the Sale of Parts (these "Terms and Conditions"), is not an acceptance or confirmation of any offer made by Buyer, and is expressly made conditional on assent to these Terms and Conditions. No additional or different terms or conditions will be binding upon Krones unless specifically agreed to in writing by Krones. Krones hereby objects to any such additional or different terms and conditions contained in any request for quotation, request for proposal, purchase order, notice of award or other form, document or communication heretofore or hereafter received from Buyer. This quotation order confirmation, or other document and these Terms and Conditions are collectively referred to as this "Contract". This Contract may not be suspended, terminated or cancelled by Buyer except upon terms accepted by Krones in writing.

## **2. Samples and Other Materials.**

(a) Buyer shall, at its sole expense, promptly furnish Krones with any and all layouts, drawings, technical specifications, samples, product specifications and any and all other data and materials necessary or appropriate for Krones' design and engineering of the Parts, including without limitation classification and machine dimensioning thereof (such layouts, drawings, specification, samples, data and materials referred to herein as the "samples and other materials"). Without limiting the generality of the foregoing, Buyer specifically agrees to submit six (6) samples (or such other quantity as may be agreed by the parties) of each unit of any and all materials (*e.g.*, bottles or other containers, labels for labeler magazines, packs, and so on) to be handled by the Handling Parts. In addition, Buyer will submit any and all specific samples and other materials requested by Krones in writing. All drawings must be furnished as IGES files with 3D-CAD application suitability or in such other format as may be agreed by the parties. However, Krones will consider any reasonable request by Buyer to furnish drawings in PDF vector file format as an alternative to submitting the drawings as IGES files. If any package to be handled by the Handling Parts already exists on the market, then Buyer shall provide the mold and customer drawing for such package and shall also provide Krones with the Krones machine number and with identification of the applicable plant where such package is being run. Such mold, drawings, machine number and identification are deemed to constitute a part of the samples and other materials, as that term is defined above.

(b) Buyer shall submit all samples and other materials within ten (10) calendar days after Buyer accepts this quotation and submits its order for the Parts hereunder. Any and all costs that result from any changes in any such samples and other materials shall be charged to Buyer, and any delay caused by such changes shall extend the delivery date. All such samples and other materials shall be delivered at Buyer's sole

expense to such Krones AG facility (or other Krones facility) as may be designated by Krones.

### **3. Price; Payment Terms.**

(a) The purchase price payable to Krones for the Parts will be as set forth in Krones' quotation, subject to adjustment as contemplated by these Terms and Conditions. All prices are subject to change by Krones during the time prior to acceptance by Krones of Buyer's purchase order. Such changes will be communicated to Buyer in writing. All prices are quoted and payable, without set-off or deduction, in U.S. Dollars unless otherwise specified in writing by Krones. Except as otherwise set forth in the Krones quotation, the purchase price will be payable as follows. For purchase orders with a purchase price greater than \$100,000, Krones will invoice (i) 50% upon agreement to this Contract, and (ii) 50% upon delivery of the Parts. For purchase orders with a purchase price of less than \$100,000, Krones will invoice 100% of the purchase price upon delivery of the Parts. All invoices are payable within 30 days from date of invoice.

(b) Without limiting the foregoing, prices on Parts sourced from outside the United States are subject to change by Krones upon notice due to fluctuating currency exchange that may occur after preparation and submission of the initial quotation but prior to placement by Buyer and/or acceptance by Krones of the order.

### **4. Impairment of Credit.**

If Buyer (a) is or becomes insolvent or is unable to pay its debts as they mature, (b) files or has filed against it a bankruptcy, insolvency or any similar petition or is made the subject of an "order for relief" as that term is defined in the U.S. Bankruptcy Code, or (c) fails to make any payment hereunder as and when due, or if Krones has a reasonable belief that any of the foregoing is impending or otherwise in good faith doubts the ability of Buyer to pay the purchase price for the Parts, then Krones may at its option (w) suspend performance hereunder, (x) terminate this Contract, (y) demand cash payment in advance before shipments are made, regardless of the payment terms otherwise agreed upon, or (z) otherwise require additional security for any remaining unpaid balance of the purchase price for the Parts.

### **5. Late payment.**

Buyer agrees to pay interest at the rate of eighteen percent (18%) per annum, or at the highest rate permitted under applicable law, whichever is less, on invoiced amounts not paid when due and further agrees to reimburse Krones, upon demand, for all costs (including without limitation attorneys' fees and legal costs) incurred by Krones in the collection of any amounts owed to Krones hereunder.

### **6. Taxes.**

Sales tax, use tax, excise tax and any and all similar taxes, VAT, customs duties and fees arising out of or relating to the sale, delivery, installation or use of the Parts are not included in the purchase price. All such taxes, customs duties and fees are the sole responsibility of Buyer, and Krones shall have the right at any time to separately

invoice Buyer for any such tax, customs duty or fee that Krones may have paid or been requested to pay. Buyer shall upon receipt of such invoice pay Krones the amount stated thereon. For any such tax with respect to which Buyer is exempt, if Krones has not yet paid the tax, then Buyer may provide Krones with a copy of a valid tax exemption certificate that shows Buyer's exemption from the obligation to pay the applicable tax.

## **7. Shipment and Delivery.**

(a) Unless otherwise provided in this Contract, Parts being shipped from outside the U.S. shall be delivered to Buyer CPT to Buyer's designated facility (as that shipping term is defined in Incoterms 2020); provided, however, unless otherwise requested by Buyer in advance, Krones will arrange for freight insurance for the Parts. Unless otherwise provided in this Contract, Parts being shipped from within the U.S. shall be delivered to Buyer EXW the applicable Krones facility (as such shipping term is defined in Incoterms 2020); provided, however, upon request, Krones will on behalf of Buyer arrange freight and insurance for the Parts to a destination selected by Buyer. If Krones pays for freight and/or insurance for transit of the Parts, Krones will invoice to Buyer the actual costs thereof plus 15%. Krones will provide an estimate for the anticipated cost of freight at Buyer's request. Such estimate shall not be binding on Krones.

(b) In the absence of shipping instructions agreed upon by the parties, the Parts are to be shipped by whatever shipping method Krones deems appropriate, and, in any event, the Parts are at the risk of Buyer from and after delivery and Buyer assumes all responsibility for shortage, loss, delay and damage occurring in transit.

(c) Krones shall not be liable for any damage or liability as a result of any delay, failure to deliver or other failure to perform due to any cause beyond Krones' reasonable control, including but not limited to any embargo, customs delays, or other governmental act, regulation or request, civil insurrection, civil disturbance, war, act of terrorism, fire, flood, hurricane, public health emergency, or other act of nature or act of God, accident, strike or other labor disturbance, slowdown, act of Buyer, shortage of materials or failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, or any other factor or event beyond Krones' reasonable control. Use of the Parts by Buyer shall constitute a waiver of any claim for delay.

(d) If the Parts are ready for shipment, and shipment thereof is delayed for reasons attributable to Buyer, the risk of loss of such Parts shall pass to Buyer as of the day such Parts are ready for shipment.

(e) If Krones is obliged by applicable law, statute or regulation to accept return of the transport packaging, then Buyer shall bear the cost of such return, including without limitation any customs duties and costs of customs clearance, and shall bear the cost for recycling such packaging if it cannot be reused by Krones.

(f) If transport of the Parts is arranged for by Krones and any Part suffers transport damage or a transport-related material defect after the Part has been handed over to the forwarding agent, Krones will, at the request of Buyer, assign its claims against the

forwarding agent or the transport insurance provider, as applicable, with regard to the damage, if any, suffered by Buyer by such transport damage or transport-related material defect; provided, however, that any and all claims against Krones resulting from any transport damage or transport-related material defect shall be excluded and are hereby waived by Buyer. Such assignment shall be conditioned upon receipt by Krones of payment in full of the purchase price for the Parts and of any other amounts owned Krones by Buyer.

#### **8. Inspection and Acceptance.**

The Parts shall be deemed finally inspected and accepted within five (5) calendar days after Buyer's receipt thereof unless notice of a claim is given in writing to Krones within such time period.

#### **9. Installation and Training.**

(a) INSTALLATION IS NOT INCLUDED IN THE PURCHASE PRICE FOR THE PARTS AND MUST BE SPECIFICALLY CONTRACTED FOR. The parties acknowledge and agree that final adjustment of the Parts and/or the equipment into which the Parts are to be incorporated must be performed at the site where the Parts are to be installed. Buyer acknowledges that Krones recommends that installation of the Parts be performed by Krones. Buyer further acknowledges that fine tuning and adjustment of the Parts and of the equipment into which the Parts are to be incorporated requires additional time following delivery and installation. Buyer is responsible to plan its production requirements accordingly.

(b) A service engineer to aid in the installation of the Parts is available at an additional cost pursuant to Krones' "General Terms for Technical Service" in effect at the time of contracting therefor. The period of service is generally dependent upon the type of Parts being installed.

(c) Training is not included in this Contract unless expressly included and specifically itemized herein as a purchased item.

#### **10. Warranty.**

(a) Krones warrants that each Part (i) shall be free from defects in materials and workmanship for a period (the "Warranty Period") ending on the earlier to occur of (A) 1,000 hours of operation of the Part or (B) expiration of thirty (30) calendar days after the first to occur of installation of the Part or lapse of one hundred (100) calendar days after the date of arrival of the Part at Buyer's facility; and (ii) will be transferred free and clear of any third-party liens. This warranty is conditioned on Buyer paying the full purchase price for the Parts.

(b) If within the Warranty Period for any Part such Part shall be proved to be defective in material or workmanship, the affected portion of such Part will be repaired or replaced free of charge (but not including freight or labor), or Krones will refund the purchase price paid by Buyer for the defective Part, at Krones' option. If Krones elects to replace the defective Part or portion thereof, its sole obligation shall be to provide the replacement without charge, and any associated freight or labor is not included in the warranty. Such repair, replacement or refund (whichever Krones determines, in its

discretion, to provide) shall be Kroner's sole obligation and Buyer's exclusive remedy for any deficiency in the Parts furnished hereunder and shall be conditioned upon Buyer's return of such Parts to Kroner DDP (Incoterms 2020) Kroner's loading dock in Franklin, Wisconsin, Neutraubling, Germany or such other Kroner facility as may be designated by Kroner. THE FOREGOING EXPRESS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

KRONER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. Any claim hereunder for breach of warranty must be made by Buyer within thirty (30) calendar days after the end of the Warranty Period on the Parts underlying the claim or shall be forever barred.

(c) The foregoing express warranty shall be null and void if the Part has not been altered or repaired (other than by Kroner or its designee) or subjected to improper installation (by anyone other than Kroner), misuse, abuse, neglect or abnormal conditions. This warranty shall not apply to any portion of the Parts which becomes defective due to normal wear and tear or other causes that do not arise from any defect in the Parts. This warranty does not apply to any parts or components manufactured by third parties, including electrical components. Kroner shall not be responsible for any defect or damages actually caused by failure to follow the Kroner operating manuals or Kroner recommended maintenance program.

(d) Buyer shall notify Kroner of any claim of defective material or workmanship (collectively the "Warranty Defect") in writing promptly upon its discovery by Buyer. Promptly upon receipt of a written notice of a Warranty Defect, Kroner shall attempt to validate the Warranty Defect. If the Warranty Defect is valid, Kroner shall, at its option, repair or replace the affected portion of the Parts or refund the purchase price therefor as quickly as commercially reasonably possible. Any repaired or replaced Parts shall themselves be deemed to be covered by the warranty hereunder for the balance of the Warranty Period only.

(e) Kroner agrees to assign to Buyer any rights that Kroner has under any manufacturer's warranty on any of the Parts, if and to the extent that assignment is permitted by the terms of the warranty and applicable law.

#### **11. Limitation of Liability.**

IN NO EVENT SHALL KRONER, ITS AFFILIATES OR CONTRACTORS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE AND EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS CONTRACT, OR FOR ANY CLAIM BY ANY THIRD PARTY, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (IN-

CLUDING NEGLIGENCE, ERRORS AND OMISSIONS AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, EVEN IF KRONES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE SHALL FAIL OF ITS ESSENTIAL PURPOSE. THE MAXIMUM AGGREGATE LIABILITY OF KRONES ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, BREACH OF WARRANTY (INCLUDING THE COST OF REPAIRING OR REPLACING THE PARTS), TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY AND ERRORS AND OMISSIONS) OR ANY OTHER CAUSE OR FORM OF ACTION SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE ACTUALLY RECEIVED BY KRONES HEREUNDER. THE FOREGOING IS NOT INTENDED TO LIMIT KRONES' LIABILITY IN TORT FOR PERSONAL INJURY (INCLUDING DEATH) OR PHYSICAL DAMAGE TO THIRD-PARTY PROPERTY (OTHER THAN WITH RESPECT TO PRODUCTS OR PACKAGING) TO THE EXTENT CAUSED BY KRONES' NEGLIGENCE OR WILLFUL MISCONDUCT OR BY MANUFACTURING DEFECT IN THE PARTS.

**12. Security Interest; Insurance.**

Buyer grants to Krones a security interest in the Parts to secure payment of the purchase price therefor and all other fees or amounts, which are or become due and payable to Krones. In the event of nonpayment in breach of this Contract, or disposition or transfer of any of the Parts to a third party, Krones shall be entitled to foreclose on its security interest in the Parts. Krones is hereby authorized to file any financing statements or other documents to perfect the security interest granted in this Contract, including a UCC-1 statement in a form that is satisfactory to Krones. Buyer shall upon request provide Krones with a legal description of the location of Buyer's facility where the Parts are installed to aid Krones in making a "fixture filing". Krones' security interest in the Parts shall terminate upon Buyer's full and final payment of all sums due and owing. In addition, for so long as any amount of the purchase price for the Parts remains unpaid, Buyer shall keep the Parts insured against all casualty or loss for not less than the full amount of such purchase price with an insurer reasonably acceptable to Krones, and Krones shall be named an additional insured and loss payee under such insurance policy. Buyer will notify Krones not less than thirty (30) calendar days prior to cancellation or amendment of the policy. However, the foregoing shall not change the time at which the risk of loss passes to Buyer, which shall remain in all events as set forth in Section 7 hereof.

**13. Specifications.**

Krones reserves the right to alter the design or specifications of the Parts at any time prior to delivery so long as such alteration does not materially change the basic function of the Parts or increase the purchase price therefor.

**14. Infringement/IP Rights.**

Krones shall not sell to Buyer any Parts the sale of which infringes on any intellectual property right of any third party. Krones shall indemnify and hold Buyer harmless from any third-party claim against Buyer arising from breach of the foregoing sentence

if Buyer notifies Kronos thereof within a reasonable period of time after Buyer becomes aware of such claim and gives authority, information and assistance (at Kronos' expense) for the defense of such claim. If at any time Kronos determines that there is a substantial question of infringement or in case the sale of the Parts or any portion thereof is judicially held to constitute infringement and the use of the Parts or any portion thereof is enjoined by reason of such infringement, then in addition to the foregoing indemnification obligation, Kronos shall have the right (but not the obligation) to, at its own expense, either (a) procure for Buyer the right to continue using and selling the Parts or part thereof; or (b) replace the Parts or part thereof with non-infringing goods; or (c) modify the Parts or part thereof so that they become non-infringing; or (d) remove the Parts and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of Kronos for patent infringement or other intellectual property infringement relating to the Parts. The preceding paragraph does not apply to modifications made by Buyer to any goods (including the Parts), nor does it apply to any goods (including the Parts) or portion thereof manufactured to Buyer's design or specifications, and Kronos shall have no liability or obligation whatsoever under the preceding paragraph in respect of any such goods. As to any and all such goods, Buyer shall indemnify and hold Kronos harmless from and against any and all claims that such goods infringe the rights of any third party. Buyer is not acquiring any right, title, or interest in the intellectual property rights of Kronos.

#### **15. Safety.**

Buyer assumes responsibility for the operation of the Parts in accordance with sound safety practices. Buyer shall use and shall require its employees to use any and all safety devices, guards, signs, instructions and safe operating procedures required by law, regulation, code or applicable safety standard or by Kronos, and Buyer agrees not to remove or modify any such safety device, guard, sign, instruction or procedure for use provided with the Parts. Buyer shall indemnify Kronos from and against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defense) that Kronos may incur as a result of any breach by Buyer of this Section 15.

#### **16. Non-Solicitation.**

Buyer agrees that neither it nor any of its subsidiaries shall for a period expiring one year after delivery of the Parts solicit or hire any service technician, service manager or project manager of Kronos, Kronos AG or any of their affiliates who is involved with performing services at Buyer's Facility or otherwise becomes known to Buyer in connection with this Contract; provided, however, the foregoing shall not apply to employees that have been separated from employment for not less than six months.

#### **17. Entire Agreement.**

The terms and conditions of this Contract shall be considered to be the terms and

conditions governing any purchase order issued by Buyer to Kronos and any sales contract entered into by Buyer and Kronos, and this Contract, as supplemented by the quantities and approximate delivery dates that are agreed upon by the parties, shall constitute the complete and exclusive statement of the terms and conditions hereof and thereof and shall supersede all prior oral and written statements of any kind whatsoever made by either party or their respective representatives. No statement or writing subsequent to this quotation purporting to modify or add to the terms and conditions hereof shall be binding unless consented to in writing by duly authorized representatives of Kronos.

**18. Governing Law; Choice of Forum.**

THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF WISCONSIN WITHOUT REFERENCE TO PRINCIPLES PERTAINING TO CONFLICTS OF LAWS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. This Contract shall be deemed to have been executed and performed in the State of Wisconsin. All disputes arising out of or related to this Contract shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect. All such proceedings shall be held in Milwaukee, Wisconsin.

**19. General Provisions.**

(a) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Contract shall not be assigned by Buyer without the prior written consent of Kronos. Any attempted assignment by Buyer without such prior written consent shall be null and void and without legal effect.

(b) If, for any reason whatsoever, one or more of the provisions of this Contract shall be held or deemed to be illegal, invalid or unenforceable, the remaining provisions of this Contract shall not be affected thereby and shall remain in full force and effect.