

## **AGREEMENT TO PAY RESTITUTION AND MONETARY PENALTY**

WHEREAS, Krones Aktiengesellschaft ("KAG") is a company formed under the laws of Germany and based in Neutraubling, Germany, and is engaged in the business of manufacturing and selling equipment to be used for bottling beverages;

WHEREAS, Krones, Inc. ("KI") is a North American subsidiary of KAG and a corporation organized under the laws of the State of Wisconsin, with its headquarters located in Franklin, Wisconsin, that sells equipment manufactured by KAG to customers in North America and often installs and services such equipment at its customers' business locations; (KAG and KI shall be referred to herein collectively as "KRONES");

WHEREAS, United States Attorney's Office for the Western District of Pennsylvania ("USAO-WDPA") has conducted a criminal investigation of a scheme and artifice to defraud orchestrated by Gregory Podlucky and Le-Nature's Inc. ("Le-Nature's"), which acquired bottling equipment from KRONES, and also negotiated proposals to acquire additional equipment from it, during the years 2004-2006;

WHEREAS, the USAO-WDPA asserts that under criminal laws of the United States KRONES bears responsibility as a result of misrepresentations by it for approximately \$120 million of losses incurred by Le-Nature's lenders in the 2004-2006 time frame, such losses consisting of funds advanced to KI to pay for bottling equipment but diverted to other purposes;

WHEREAS, some of the entities that the USAO-WDPA asserts suffered the aforesaid losses have earlier reached final settlements of their financial claims against KRONES, and others among such entities are now involved in pending litigation in pursuit of their claims, but have recently reached written agreements with Krones to settle such claims;

WHEREAS, the remaining entities which the USAO-WDPA asserts suffered the aforesaid losses that have recently, with representation by counsel, reached written agreements to settle, are to receive financial compensation under the terms of such agreements on or before December 31, 2012, and have expressly affirmed that their settlements are fully satisfactory resolutions of their claims against Krones,

WHEREAS, KRONES denies any criminal liability, that any misrepresentations were made, and any liability for any asserted diversions, but KI admits that its conduct played a role in causing the subject losses to the entities discussed above; and

WHEREAS, KRONES maintains that current KI leadership has overseen corrections of any prior controls issues that may have contributed to the subject losses to prevent similar conduct from reoccurring;

NOW, THEREFORE, the USAO-WDPA and KRONES enter into the following Agreement:



## **I. OBLIGATIONS AND AGREEMENTS**

1. **Payment of monetary penalty.** On or before December 31, 2012, KI shall pay to the United States of America in full a monetary penalty in one lump sum of \$15,000,000.00. The payment will be made via electronic funds transfer pursuant to instructions to be provided within fifteen days of the execution of this agreement by the USAO-WDPA to counsel for KRONES. Timely payment by KI of said sum is fully guaranteed by KAG .

2. **Payment of restitution.** KRONES shall comply with all settlement agreements in the pending civil cases involving the losses asserted by the USAO-WDPA, as described herein, above, and make all payments required thereunder on or before December 31, 2012. Together with the payments of financial claims made in earlier settlements by Krones to the additional entities that suffered losses but are not involved in the pending civil litigation, subject to the following sentence the USAO-WDPA will accept such payments in the aggregate as adequate restitution to those entities that it asserts were harmed as described herein, above. If the settlement payments to alleged victims contemplated by this Agreement in addition to amounts previously paid to other alleged victims shall amount to a total of not less than \$110 million (U.S), Krones shall be deemed to have complied with this agreement.

## **II. USAO-WDPA'S AGREEMENT REGARDING CRIMINAL PROSECUTION**

**Agreement not to prosecute.** Based upon KRONES' agreement to undertake the obligations as set forth above in this Agreement, the USAO-WDPA agrees that KAG, KI, and KRONES' current or former officers, directors, executives, or employees will not be prosecuted for any alleged crimes arising from the USAO-WDPA's criminal investigation of the Le-Nature's fraud. KRONES understands and agrees, however, that if it fails to meet the terms of this Agreement, the United States Attorney shall not be barred by this Agreement from initiating criminal prosecution against KRONES or any other protected parties under this Agreement for crimes, if any, arising from the Le-Nature's fraud. This Agreement does not provide any protection to or rights in any entity or person other than KRONES and its current and former officers, directors, executives, and employees.

## **III. WAIVER AND TOLLING OF STATUTES OF LIMITATION**

KRONES agrees that in the case of any breach of this Agreement, that all statutes of limitation applicable to any prosecutions relating to LeNature's that are not currently time-barred by the applicable statute of limitations on the Effective Date of this Agreement shall be tolled during the term of this Agreement, and that any prosecutions relating to LeNature's that are not time-barred by the applicable statute of limitations on the Effective Date of this Agreement may be commenced against KRONES in accordance with this Agreement, notwithstanding the intervening expiration of the statute of limitations. KRONES expressly waives and relinquishes any rights to claim the

expiration of any statute of limitations or any claim of double-jeopardy to any prosecution brought against it in the event of a breach of this Agreement.

This Agreement may be executed by the signators in counterparts and all counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such.

***On Behalf of Kronen Aktiengesellschaft:***

NAME: \_\_\_\_\_ Date: \_\_\_\_\_


TITLE: \_\_\_\_\_

***On Behalf of Kronen, Inc.***

NAME: \_\_\_\_\_ Date: \_\_\_\_\_

TITLE: \_\_\_\_\_

***On Behalf of United States Attorney's Office for the Western District of Pennsylvania***

NAME:  Date: 11.7.12

TITLE: UNITED STATES ATTORNEY

expiration of any statute of limitations or any claim of double-jeopardy to any prosecution brought against it in the event of a breach of this Agreement.

This Agreement may be executed by the signators in counterparts and all counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such.

***On Behalf of Kronos Aktiengesellschaft:***

NAME: Christoph Jurek Date: Nov 6, 2012  
TITLE: CHIEF FINANCIAL OFFICER

***On Behalf of Kronos, Inc.***

NAME: James R. Clark Date: Nov. 7, 2012  
TITLE: duly authorized Attorney

***On Behalf of United States Attorney's Office for the Western District of Pennsylvania***

NAME: \_\_\_\_\_ Date: \_\_\_\_\_  
TITLE: \_\_\_\_\_