

# 35 YEAR MATERIAL WARRANTY ROOF AND WALL KIRBY-COOL

**Materials Warranty.** Kirby warrants that, for a period of one (1) year from the Date of delivery of materials to the Builder, Kirby products shall be free from defects in materials and defects in fabrication of the building components. Kirby shall, as the exclusive remedy under this Warranty, either repair or replace, at Kirby's election and expense, any defective materials, the failure of which is covered by this Warranty. As used in the this agreement, "materials" is defined as all primary and secondary structural steel building components, bracing, fasteners and connections, wall and roof panels, flashing and accessories provided by Kirby.

**Panel Warranty.** Kirby Cool(70% Kynar 500) pre-painted galvanized panels (G-90 Coatings) and pre-painted aluminum-zinc alloy-coated panels are warranted as follows: The coated surface must be a roof on which no standing water accumulates, or a vertical exposure.

a) Kirby Cool (70% Kynar 500) paint will not peel, crack, check or chip for a period of thirty-five (35) years from the Effective date.

b) Kirby Cool (70% Kynar 500) paint will not chalk in excess of a numerical rating of Nine (9) for vertical surfaces and eight (8) for non-vertical surfaces when measured in accordance with the standard procedure specified in ASTM D 659-80 for a period of thirty-five (35) years from the Effective Date. c) Kirby Cool (70% Kynar 500) paint will not fade or change in color in excess of four (4) E units of color difference ("NBS Units") for vertical surfaces and Five (5) E NBS Units for non-vertical surfaces when measured in accordance with the standard procedure specified in ASTM D 2244-85, Paragraph 6.3, for a period of thirty-five (35) years from the Effective Date.

**Limitations.** This Warranty is subject to the following conditions, terms, limitation and exclusions. a) This Warranty applies only to the above-described materials of Kirby and does not cover accessories, fixtures, insulation, goods or any materials not manufactured but sold by Kirby. This Warranty shall be valid and apply to Kirby's materials only if the materials are erected and installed strictly in accordance with (1) Kirby's engineering plans and specifications and details; (2) all applicable erection standards and procedures regularly published by the Metal Building Manufacturer's Association; and (3) current erection manuals issued by Kirby. Any modification or deviation from Kirby's specified materials, products, or specified erection procedures without the prior written consent of an officer of Kirby will void this Warranty. b) This Warranty is applicable only to rust or corrosion damage caused by "normal atmospheric exposure" which shall not include the following conditions which are specifically excluded from this Warranty:

1. Deterioration caused by marine (salt water) atmospheres, regular spray of either salt or fresh water or by constant exposure to either salt or fresh water. As used herein, "constant exposure to water" includes standing water caused by inadequate roof drainage or condensation caused by inadequate vapor barrier installed in the building. 2. Corrosion caused by heavy fallout or exposure to corrosive chemicals, ash, or fumes from chemical plants, foundries, plating works, kilns, paper plants, fertilizer manufacturing, animal waste or similar sources of corrosive vapors and gases. 3. Deterioration caused by corrosive fumes or condensates of harmful substances with green or wet lumber. 5. If the materials are erected in an area, generated or Released inside the building. 4. Damage due to contact which is originally a "normal atmospheric exposure", but the environment subsequently changes to one that is not a "normal" atmosphere (e.g. the construction of a chemical plant nearby) this Warranty will then be void. c) This Warranty is limited to materials of Kirby, which are sold and erected within the United States of America and Canada. d) This Warranty shall not apply to any structural failure or damage attributable to (1) engineering design caused by incorrect, inadequate, or erroneous design information transmitted to Kirby by or through the owner, contractor, builder or their respective

design representative; or (2) acts of God, loads of snow, ice, or wind exceeding the specified design loads in the purchase order, or any other form of casualty loss arising from such risks; or (3) negligent, defective, or improper erection of the structure, its foundation, or additional loads placed on the structure by others not specified to Kirby in the purchase order agreement. e) This Warranty is limited to the original owner of the building and is not transferable or assignable. This Warranty will automatically terminate upon the sale, transfer or conveyance (except to secure debt) of the building. f) Claims for any defects or breach of this Warranty must be submitted by the owner, or owner's representative, by written notice within thirty (30) days of the discovery of the defect, or the date that the defect reasonably should have been known. Owner will exercise reasonable diligence in inspection and maintenance of the materials in order to mitigate expense involved in repairing, replacing or repainting the materials. g) During the term of this Warranty the Owner shall perform routine inspections and maintenance on an annual basis regardless of installation location. If the panels are on a surface located less than 1000 feet from the seashore, (salt water) maintenance will be performed by the building's owner, and must be thoroughly washed with potable water annually. Failure to comply with and maintain proper records of the annual inspection and maintenance procedure will void this Warranty coverage in its entirety. Kirby reserves the right to inspect the building upon reasonable notice to the owner. h) Kirby's responsibility and liability pursuant to this Warranty is expressly limited to the replacement, repair or repainting of the defective materials at Kirby's option and in no event will such liability in the case of panel defects exceed the original purchase price of the material. Any expense of labor, installation, or removal will not be included in this Warranty. i) IN CONSIDERATION OF THE SALE OF THE MATERIALS AND THIS WARRANTY, KIRBY SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL DAMAGES, including, but not limited to, lost profits, lost rents, damage to inventory, contents or other property, expenses, loss to the building or loss of use thereof, either in contract, tort (including negligence), strict liability, contract, breach of warranty or for any other cause arising out of any failure of the materials. j) Owner covenants and agrees that during the term of the Warranty, the Owner shall procure, maintain and keep in force, property, casualty, and liability insurance to protect against all insurable losses, and to the full extent that such insurance is available, waives any and all rights of subrogation, including without limitation, legal, equitable and contractual claims, against Kirby for losses covered by such insurance, whether based upon any cause of action, including, but not limited to, tort, contract, warranty or strict liability. k) This Warranty will not be effective and binding on Kirby until (1) payment in full for the materials has been received by Kirby; (2) the Warranty has been signed by an officer of Kirby; and (3) a copy of this Warranty has been signed by the owner and returned to Kirby. The Effective Date of this Warranty is defined as the date of delivery of the materials from Kirby unless a later date is specified above as the "Effective Date". l) This Warranty constitutes the entire agreement among the parties and is for the sole benefit of the original owner named above. There are no other parties or intended beneficiaries to this Warranty. This Warranty may not be modified, amended or supplemented except by written agreement signed by an authorized officer of Kirby. m) Except as expressly provided in this Warranty, Kirby makes no representations or warranties of any kind with respect to the materials covered hereby, including, without limitation, warranties of merchantability of fitness for a particular purpose, and does not make any warranty or assume any obligation with respect to the validity of any patents, copyrights or trademarks with respect to the materials. n) This Warranty shall be governed by and construed in accordance with the laws of the State of Tennessee.

**Kirby Project#**

**Owner Name:**

**Builder:**

**Building Location:**

**ORIGINAL OWNER** \_\_\_\_\_

**BUILDER** \_\_\_\_\_

**Customer Service Manager**

**Effective Date:**

**Roof Panel Type:**

**Wall Panel Type:**