

Kelly Pipe Co., LLC

Terms And Conditions Of Purchase

1. **PACKING AND SHIPMENT:** Unless otherwise specified on the face of this purchase order, all articles shall be delivered F.O.B., destination. No charges will be allowed nor shall any be charged for taxes, transportation, boxing, packing, returnable containers or insurance unless stated. All sales, use, excise or similar taxes to be paid by Buyer must be itemized separately hereon and on invoices. All shipments must be packaged in a manner that will provide for efficient handling and preclude the possibility of damage to the articles. In addition, shipments to be tendered to common carriers for delivery must conform to the packaging requirements of air, rail, or motor carrier freight classification. Seller shall be liable for any increase in freight charges caused by or arising from sellers failure to follow shipping instructions specified on the face of this purchase order.

2. **DELIVERY:** The parties have agreed to the delivery dates established herein and Buyer's schedules have been based thereon. Any future delivery dates will be established by mutual agreement between the parties. If the Seller is unable to make delivery on date specified, then Seller shall give notice to Buyer of his inability to make timely delivery with the reasons therefor as soon as such inability is known to Seller. Unless delay is due to causes beyond Seller's control, Buyer reserves the right together with any other rights he may have by law to purchase elsewhere and charge Seller with the difference between the price paid and the price of this agreement, or cancel that particular release at Buyer's option. In the event Buyer selects to cancel a particular release upon Seller's inability to deliver on time, Buyer shall be credited with that amount toward the total amount purchased. Acceptance of late deliveries shall not release Seller of the obligation to make future deliveries in accordance with the delivery schedule established herein. Title to goods shall pass to Buyer upon receipt of the goods at the destination designated on the face of this Purchase Order and Seller assumes all risk of loss until receipt by Buyer at such destination.

3. **ACCEPTANCE:** All goods are subject to approval by Buyer's inspection. Defective goods will be returned at Seller's expense and the price thereof deducted from remittance. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to be in conformity with this order, Buyer may reject and return the entire shipment or lot without further inspection or at his option may complete inspection of all items in the shipment or lot, reject and return any or all non-conforming units or accept them at a reduced price. Buyer's acceptance of any non-conforming articles shall not constitute a waiver of specification requirements for any additional article required to be delivered hereunder. Payment as specified on the face of this form is specifically conditioned upon acceptance of articles by Buyer. However, payment shall not be deemed to waive any warranty as described in Paragraph 4 which follows.

4. **WARRANTY:** The seller warrants that all articles to be delivered hereunder shall be merchantable, free from defect in workmanship and material, and shall conform to the specification. Buyer shall not be deemed to have waived any warranty by reason of receipt of or payment for said goods. Buyer's acceptance of goods shall not be deemed to waive any warranty as to any defects or unfitness not in fact discovered in Buyer's inspection and test. If the Buyer shall give the Seller notice of any defect of non-conformity within one year from the date of delivery of any article affected thereby the Seller shall at no cost to the Buyer and with all possible speed furnish replacement thereof or refund purchase price at the option of Buyer. All warranties shall run both to Buyer and to its customers.

5. **PRICE:** The Seller warrants that the prices set forth herein are as low as any net price now given by the Seller to any other customer for like materials and quantity and agrees that if during the pendency of this order lower net prices are quoted to anyone for similar materials, such lower net prices shall be from that time substituted for the prices contained herein. If during the term of this contract the Buyer is able to purchase products of like quality and in a quantity not more than herein specified and upon like terms and conditions at a price lower than the price named herein Seller upon receipt of satisfactory written evidence of same shall at his option meet such lower price or permit Buyer to purchase the undelivered portion hereunder at such lower price. The quantity so purchased by Buyer from others shall be deducted from the quantity covered by the contract.

6. **MANUFACTURE:** If this purchase order is identified as a blanket purchase order, Buyer will release specific quantities against this order in accordance with its needs. Releases will be noticed to Seller by Buyer making references to this master agreement by number. Release dates will be given as far in advance as possible to permit Seller to schedule production accordingly. Seller shall not manufacture any parts for this order except as released by Buyer, and Buyer's only liability for parts so manufactured shall be as agreed in Section 7, below.

7. **TERMINATION OR CANCELLATION:** Buyer may at any time by written notice terminate for its convenience or cancel for Seller's breach all or any part of this order. If this order is terminated at the Buyer's convenience prior to the time that the full amount specified on this order has been released to Buyer, then the bill-back schedule as specified on the face of this form shall apply except that any bill-back price shall not exceed the lowest price then being quoted by Seller for the same quantity to any other customer. If there is no bill-back schedule on the face of this order then no bill-back shall apply. The total of any claims under the application of a bill-back schedule, if applicable, shall not exceed the canceled commitment value of this purchase order. If this order is canceled for Seller's breach, Seller shall not be entitled to and shall have no claim against Buyer for any costs incurred or any profit with respect to the terminated or canceled portion of this order and the bill-back schedule shall not be applicable. If at any time Seller in Buyer's judgment is failing to make sufficient progress so as to endanger performance of this order in accordance with its terms or Buyer otherwise has reasonable grounds for insecurity with respect to Seller's performance under this order, Buyer shall have the right to so notify Seller and request adequate assurance of due performance including if specifically requested a performance bond in a face amount equal to the total amount of this order and in a form and with a surety acceptable to Buyer. Failure by the Seller to furnish requested assurances (including the bond, if demanded) within ten days after receipt of written notification and request (or such further period as Buyer may grant) shall constitute sufficient grounds for cancellation of this order in whole or in part for seller's breach thereof without further notice. In the event of the institution of any proceedings against Seller, voluntarily or involuntarily, in bankruptcy or insolvency, or for the appointment of a receiver or trustee, or in the event of an assignment for the benefit of creditors of Seller, Buyer shall be entitled to cancel this order immediately upon giving notice of termination without liability, including liability for loss of anticipated profits.

8. **REMEDIES:** Seller's sole remedy in the event of breach of contract by Buyer shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and contract price. No alternate method of measuring damages shall apply, and Seller shall not be entitled to recover incidental damages as defined in the California Commercial Code. Seller shall have no right to resell goods for Buyer's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Buyer, and any resale so made shall be for the account of Seller.

9. **MODIFICATION:** Buyer may at any time and from time-to-time by Purchase Order amendment issued to Seller, change (a) the method of shipment or packing, (b) the drawings, designs or specifications, or (c) the place of delivery. If any such change causes an increase or decrease in the

cost of performance, of in the time required for performance an equitable adjustment shall be made in the contract price or delivery schedule and this purchase order shall be amended in writing accordingly. Any such claim for adjustment must be made by Seller within (15) days of the receipt of such changes. This agreement is the entire understanding between the parties and no modification, alteration or amendment other than as described above shall be effective unless in writing signed by both parties.

10. **PATENT INDEMNITY:** Seller agrees to indemnify Buyer, its successors, assigns, agents and users of its products against loss, damage or liability, including but not limited to costs, expenses and attorney's fees which are or may be incurred as a result of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any article or material supplied hereunder, provided Buyer shall notify Seller of any such action instituted against it and, to the full extent of its ability to do so, shall permit Seller to defend the same or make settlement in respect thereof. If an injunction issues as a result of any infringement claim, Seller agrees to refund to the Buyer upon Buyer's written demand the amount paid to Seller hereunder.

11. **CONFIDENTIALITY:** Seller shall keep confidential all information, drawings, specifications or data and return to Buyer upon request all documents furnished by Buyer and shall not divulge or use such information, drawings, specification or data for the benefit of any other party. Seller shall not advertise or make public in any manner the existence of this purchase order or any contents hereof without the Buyer's prior written consent.

12. **TOOLING AND MATERIALS:** Any materials supplied by Buyer for use on this order on other than a charge basis, shall be deemed as held by Seller on consignment and Seller agrees to pay for all such materials spoiled or not otherwise satisfactorily accounted for and to keep such material fully insured. Unless otherwise specified all necessary tools, including gages or fixtures required to execute this order are to be supplied by Seller. When Buyer is to pay tool charges for necessary tools, dies, gages, jigs, fixtures and the like, or when such items are to be furnished by Buyer on a no-charge basis, such items or equipment shall be and remain Buyer's property and shall be held by Seller on consignment and are to be used exclusively for Buyer's product unless directed otherwise. Seller undertakes to maintain such equipment in satisfactory working condition and to keep it fully covered by insurance at all times all without expense to Buyer. It is understood and agreed that said tools may be removed by Buyer at any time and shall not otherwise be disposed of by Seller without specific permission in writing. Material made to Buyer's design shall not be supplied to anyone else with written permission.

13. **ASSIGNMENTS AND SUBCONTRACTING:** This order may not be assigned, delegated or subcontracted in whole or in part without the express prior written consent of the Buyer. Claims for money due hereunder may be assigned by Seller to a bank, trust company or other financial institution, including any federal lending agency. However, payments due to an assignee of any monies due or to become due hereunder shall be subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Seller arising under this or any other contract order. Seller shall supply Buyer immediately with two copies of such assignment and shall indicate on each invoice to whom payment shall be made.

14. **SPECIFICATIONS:** All articles ordered to Buyer's specifications must comply with blueprints, specifications sheets and such other specifications current as of the date of this order unless otherwise stated by the Buyer in writing.

15. **SUPPLEMENTARY INFORMATION:** Any specifications, drawings, notes, instructions or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference as if set forth in full. In the event any ambiguity, discrepancy or questions arise from the specifications, drawings, notes, instructions or technical data Seller shall refer to the Buyer for a decision, interpretation or instructions.

16. **COMPLIANCE WITH LAWS:** Seller represents that it has and will continue to comply during the performance of this Purchase Order with all applicable federal, state and local laws, executive orders and regulations pursuant thereto. Seller represents that all materials delivered pursuant to this Purchase Order shall conform with the safety order of the State of California, Division of Industrial Safety and O.S.H.A.

17. **WRITTEN ACCEPTANCE:** Written acceptance of this purchase order must be submitted to Kelly Pipe Company (Buyer) within (5) days after receipt of said Purchase Order. But, should delivery be made before receipt of the written acceptance, then it is agreed by and between the Buyer and Seller that Seller will be bound by all terms, conditions and provisions hereof.

18. **SUCCESSION:** This Purchase Order, incorporating by reference all terms, conditions and provisions hereof, shall be binding upon any and all successors in interest, assigns or heirs of Seller.

19. **EFFECT OF INVALIDITY:** The invalidity in whole or in part of any term, provision or condition of this Purchase Order shall not affect the validity of any or all other terms, provisions or conditions of this Purchase Order.

20. **WAIVER:** No waiver of Buyer of any breach of this Purchase Order shall be held to be a waiver of any other or subsequent breach. All rights and remedies available to the Buyer shall be taken and construed as cumulative, that is in addition to any other rights or remedies provided herein or by law.

21. **APPLICABLE LAW:** This Purchase Order is to be interpreted in accordance with the laws of the State of California.

22. **CONSTRUCTION:** This Purchase Order embodies any and all understandings, agreements or covenants by and between Seller and Buyer pertaining to the articles described on the front page hereof and exclusively determines the rights and obligations of the parties hereto. Seller hereby agrees that any alteration or modification of any or all of the terms, provisions or conditions herein must be approved in writing by the Buyer within (10) days from receipt thereof. Failure of Buyer to approve any such alteration or modification within said (10) days from receipt thereof shall constitute a rejection of said altered or modified terms and conditions or promises and shall result in the terms, conditions and provisions of this Purchase Order as stated herein above being given full force and effect.