

**KELLY PIPE CO., LLC**  
**STANDARD TERMS AND CONDITIONS OF SALE**

- 1. PRICES AND SHIPPING TERMS.** All prices quoted are subject to change without notice. Prices do not include any taxes and any such taxes shall be invoiced as a separate item and paid by the Buyer. Unless otherwise stated, prices exclude any gaskets, joint lubricant, joint cloth and banding material. All sales are made f.o.b. point of shipment. In all cases, title and risk of loss or damage shall pass to Buyer upon delivery to carrier at point of shipment. All items shown as freight allowed pertain to particular items and quantities. Any requested change in order quantity, release schedule including partial releases, product processing requirements, or other alteration from that originally quoted will be subject to a price increase, additional freight charges and revision of delivery dates. Prices may not include delivery, and where noted delivery charges will be added to the prices quoted. All labor or mechanical facilities required to unload shall be provided by Buyer without any cost to Kelly. All weights and dimensions are approximate. Shipping Tolerances on all orders are +/-5% unless agreed otherwise in writing .
- 2. DELIVERY.** Factory shipping dates given in advance of actual shipment are estimates and shall not be deemed to represent fixed or guaranteed shipping dates. Kelly shall not be liable for failure to deliver or for delay in delivery or performance due to causes beyond its reasonable control (i.e., acts of God, act or omission of Buyer, act of civil or military authority, fire, labor difficulties, riot or other civil disturbance, insolvency or inability to perform by the manufacturer providing the products ordered, delay in transportation or any other commercial impracticability). In the event of any such delay, the date for delivery or performance shall be extended for a period equal to the time lost by reason of delay. If Buyer postpones delivery for more than thirty (30) days, Buyer agrees to pay reasonable storage fees.
- 3. PAYMENT AND FINANCIAL CONDITION.** Payment is due net thirty (30) days from invoice date. Receipt of payment from Buyer's customer, if any, shall not be a condition precedent to Buyer's obligation to make payment to Kelly. Retention is not allowed. If, in the judgment of Kelly, Buyer's financial condition at the time of manufacture or shipment does not justify the terms of payment specified, Kelly reserves the right to require payment or other adequate assurance of performance before manufacture or shipment. Kelly reserves the right to suspend its performance until such payment or adequate assurance of performance has been received. Kelly may suspend shipment of any products whenever Buyer is in default under this or any other contract between Kelly and Buyer. Any costs incurred by Kelly as a result of suspending or interrupting performance shall be paid by Buyer. Buyer agrees to pay a service charge of 1½% per month (18% per annum) or the maximum lawful rate, whichever is less, on all past due amounts. In the event of legal action, Buyer agrees to pay Kelly's attorney's fees and costs of collection.
- 4. LIMITED WARRANTIES.** Products distributed by Kelly are produced by reputable manufacturers. KELLY'S SOLE WARRANTY TO BUYER IS TO USE ITS BEST EFFORTS TO HAVE THE APPLICABLE PRODUCT MANUFACTURER REPAIR OR REPLACE PRODUCTS WHICH EITHER MAY BE DEFECTIVE OR FAIL TO CONFORM TO PUBLISHED PRODUCT SPECIFICATIONS, CONSISTENT WITH EACH MANUFACTURER'S WARRANTY OBLIGATIONS. IN NO EVENT WILL KELLY'S LIABILITY UNDER THIS SECTION EXCEED THAT ADJUSTMENT PROVIDED KELLY BY MANUFACTURER . Copies of manufacturer's warranty will be furnished upon request) . Kelly warrants that its processed or fabricated products will be free from defects in material and workmanship for one (1) year from date of shipment. Kelly's sole obligation and Buyer's exclusive remedy in connection with Kelly's processed or fabricated products shall be limited, at Kelly's option, to either replacement of the non-conforming products or credit to Buyer's account for the invoice price of the related products. Any claim under this warranty section must be made by Buyer to Kelly in writing within five (5) days of Buyer's discovery of the claimed defect, but in no event later than one year from delivery. Buyer's failure to notify Kelly of such defect or non-conformity as required herein shall bar Buyer from recovery under this warranty. EXCEPT AS TO TITLE, THERE ARE NO OTHER WARRANTIES, EITHER WRITTEN, ORAL, IMPLIED OR STATUTORY RELATING TO THE DESCRIBED PRODUCTS. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.
- 5. CLAIMS.** Buyer shall notify Kelly, in writing, of any claims for non-conformity, shortages, errors in shipment or errors in charges within five (5) days after receipt of products. Failure to provide Kelly with said written notice shall constitute conclusive evidence that Buyer has accepted the products and waived any right to reject the products. Products may not be returned without Kelly's prior written authorization. Kelly shall be afforded a reasonable opportunity to investigate any claim and inspect returned products. Acceptance of said claim and returns is at Kelly's sole discretion. Buyer may not offset payment to Kelly for claims or returned products until Kelly has issued a Credit Memo to Buyer, nor may such payment offset exceed the amount of the related Credit Memo.
- 6. LIMITATION OF LIABILITY.** Subject to limitations on warranty and other claims set forth herein, Kelly's liability on any claim for loss or damage arising out of a contract, with Buyer or from Buyer's Purchase Order pertaining to the alleged performance or breach of such contract, or connected with the supplying of any products, or their sale, resale, operation or use, shall not exceed the price allocable to such products or part thereof involved in the claim. KELLY SHALL NOT IN ANY EVENT BE LIABLE, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHER GROUNDS FOR LABOR CHARGES, IN AND OUT CHARGES, SPECIAL, CONSEQUENTIAL, INCIDENTAL, LIQUIDATED OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED PRODUCT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF BUYER'S CUSTOMERS, FOR SUCH DAMAGES.
- 7. HAZARDOUS BUSINESS.** Unless otherwise agreed in writing, products sold hereunder are not intended for use in connection with any hazardous activity or any other critical application where failure of a single component could cause substantial harm to persons or property. If so used, Kelly disclaims all liability for any damage, contamination or other injury and Buyer shall indemnify and hold Kelly harmless from such liability, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds.
- 8. IMPROPER ACT OF BUYER.** Buyer shall indemnify, defend, and hold Kelly harmless from any claim, liability, damages, lawsuits, and costs (including attorneys' fees), whether for personal injury, property damage or other, brought by or incurred by Buyer, Buyer's employees, Buyer's customers, or any other person, arising out of improper selection, application or use of products purchased from Kelly.
- 9. CANCELLATION AND RETURNED GOODS.** Orders placed by Buyer may not be cancelled without Kelly's prior written consent. The amount of credit, if any, allowed to Buyer for returned products shall be at the sole discretion of Kelly. In the event of cancellation without Kelly's consent, Kelly shall be entitled to recover any and all damages suffered by Kelly.
- 10. ASSIGNMENT.** Buyer's assignment of any or all of Buyer's duties or rights hereunder, without Kelly's prior written consent, shall be void.
- 11. PRICE CHANGE.** Prices quoted are subject to change due to changes in export related subsidies, rebates and/or tax in the country of product origin, as well as imposition of US countervailing duties pertaining to anti-dumping charges.
- 12. GENERAL.** All orders are subject to acceptance by Kelly. Any representation, affirmation of fact and course of dealings, promise or condition in connection herewith or usage of trade not incorporated herein, shall not be binding on either party. No waiver, alteration or modification of any of the provisions hereof shall be binding upon Kelly unless specifically assented to in writing by Kelly. Kelly's waiver of any breach shall not be considered a waiver of any other or future breach or of Kelly's other rights. The validity, performance, interpretation and enforcement of this agreement shall be governed by the laws of California. Any legal action filed as a result of Kelly's sale of products may be commenced in Los Angeles, California.