

Kelley Supply, Inc. Terms and Conditions

Kelley Supply, Inc. ("Kelley") will supply products ("Products") to a customer ("Customer") only subject to the following Terms and Conditions:

1. Governing Provisions. Any Quotation or Order Acknowledgment provided by Kelley is an offer by Kelley to sell the Products subject to these Terms and Conditions and is not a confirmation or acceptance of any offer to purchase on any other terms or conditions. Kelley objects and does not agree to any additional or different terms or conditions contained in Customer's request for proposal, purchase order, acknowledgment, other form, or in any correspondence from Customer. Customer's agreement to these Terms and Conditions shall be established by any of the following: (1) Customer's placement of an order for the Products in response to a Quotation referring to or attaching these Terms and Conditions, (2) Customer's failure to cancel any order in writing immediately upon receipt of an Order Acknowledgment referring to or attaching these Terms and Conditions, (3) Customer's receipt or acceptance of any Products from Kelley after receipt or notice of these Terms and Conditions, or (4) any other conduct or statement of Customer constituting express or implied acceptance of these Terms and Conditions. Once any of the foregoing occurs, the contract to purchase the Products may not be canceled by Customer, nor may any Products be returned to Kelley, without Kelley's written approval.

2. Modification of Terms. All other terms and conditions are expressly rejected by Kelley and no addition or modification of these Terms and Conditions shall be binding on Kelley unless agreed to by Kelley in writing. Further, the failure of Kelley to insist on strict compliance with any of these Terms and Condition shall not be considered a waiver of any such term or condition nor shall it affect the right of Kelley to insist on strict compliance with these Terms and Conditions any time thereafter.

3. Manufacturer's Warranties. Because Kelley does not manufacture the Products, Kelley makes **NO EXPRESS OR IMPLIED WARRANTIES REGARDING ANY PRODUCTS**. Certain Products, however, may be subject to express or limited warranties provided by manufacturers directly to the final purchaser of the Products. Copies of such warranties may be provided by the manufacturer with the Product or may be available from the manufacturer. Kelley makes no representations about, and assumes no responsibility for, any manufacturer's warranties to the final purchaser of any Product. Kelley's sole obligation to Customer shall be to supply the identified Products to Customer in the agreed quantities and at the agreed prices subject to these Terms and Conditions.

4. Disclaimer of Warranties. KELLEY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AND KELLEY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT THE PRODUCTS DO NOT INFRINGE THE PROPRIETARY RIGHTS OF ANY THIRD PARTY.

5. Limitation of Liability. Any liability of Kelley with respect to Products sold to Customer shall be limited to the contract price of the affected Products. **KELLEY SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS SOLD BY KELLEY OR ANY UNDERTAKINGS, STATEMENTS, ACTS, OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, Kelley shall not be liable for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost goodwill, cost of capital, cost of substitute goods or services, or for any other types of economic loss, or for claims of Customer's customers or any third party for any such damages, costs or losses. **KELLEY SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR AND CONTINGENT DAMGES WHATSOEVER.**

6. Indemnification. To the maximum extent allowed by law, Customer shall defend and indemnify Kelley, its successors, assigns, employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including attorneys fees) that Kelley may incur or be obligated to pay as a result of (i) Customer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products, (ii) any infringement or alleged infringement of the industrial or intellectual property rights of others arising from Customer's formulations, plans, specifications (including Customer's trademarks and brandnames) or advertising of the Products, including advertising based on information concerning the Products that is provided by Kelley, (iii) Customer's violation or alleged violation of any federal, state or local laws or regulations, including without limitation the laws and regulations governing product safety, product use, labeling, packaging and labor practices, (iv) any warranties given by Customer to its customers with respect to the Products, including any warranties based on information concerning the Products that is provided by Kelley, and (v) Customer's breach of any of the provisions of these Terms and Conditions. Kelley's remedies hereunder are cumulative and in addition to those provided by law. No purported limitation on Kelley's remedies contained in any request for proposal, purchase order, acknowledgment, other form, or in any correspondence from Customer shall operate to reduce this indemnification obligation on the part of Customer.

7. **Prices, Quantities, and Other Terms.** Kelley will provide the Products specified in any accepted Quotation or Order Acknowledgment in specified quantities at the specified prices and on such other terms specified in such Quotation or Order Acknowledgment, subject to these Terms and Conditions. All prices are subject to applicable sales, use, excise, and other applicable taxes to be paid by Customer. All prices and available products are subject to change without notice. Customer is responsible to remit any sales or other taxes to the appropriate taxing authority when not assessed by Kelley. Customer is further responsible to identify any items exempt from taxes when placing an order for the Products.

8. **Payment and Credit Terms.** All payments to Kelley must be made in U.S. dollars. Customers without established credit must pay by Master Card, VISA, American Express, or Discover Card prior to shipment. For Customers with established credit, terms are Net 30 Days from date of shipment. Any credit extended by Kelley, including any credit limits, may, in Kelley's sole discretion, be reduced or revoked by Kelley at any time for any reason. Past due accounts will be charged 1.5% per month on any past due balance, and, for any Customer with a past due account, Kelley reserves the right to defer shipment of any order, require cash in advance of shipment, or cancel any order. Kelley further reserves the right, in its sole discretion, to decline to sell any product to any individual or company. Kelley shall be entitled to recover from Customers its costs of collection, including reasonable attorneys' fees, incurred to collect any amounts owed to Kelley by Customer.

9. **Security Interest.** With respect to Products sold on credit or otherwise not paid for in advance of shipping, Customer hereby grants Kelley a purchase money security interest in the Products and in any accounts receivable or cash from resale thereof until full payment is made to Kelley. Customer hereby authorizes Kelley to file a financing statement and/or take other action for itself and/or on behalf of Customer to protect the validity, priority, and enforceability of such security interest. Customer further agrees to execute other documents and/or to take other action requested by Kelley to protect the validity, priority, and enforceability of such security interest.

10. **Shipping/Freight.** Any special shipping requests must be made by Customer when the Products are ordered. Unless otherwise agreed, Kelley, in its sole discretion, will choose the method of shipment, which may include delivery by Kelley's trucks to locations within Kelley's regularly scheduled delivery areas, shipment by common carrier, USPS, UPS, or FedEx. Customer shall be responsible for all shipping and handling costs. Delivery by Kelley's truck shall be subject to fuel surcharges which may, from time to time, be established by Kelley. Unless otherwise agreed, the Products will be shipped FOB Colby, Wisconsin. Temperature sensitive Products or hazardous materials may require additional shipping and handling charges and/or special arrangements. Approximate shipping weights and/or estimated shipping costs are provided by Kelley only for the convenience of Customer. Actual weight, distance, the carrier, and other factors will determine actual shipping and handling charges for which Customer will be responsible.

11. **Inspection By Customer.** Customer shall be responsible for inspecting all deliveries of Product upon receipt to confirm that the correct Products in the correct quantities were delivered and to determine if any damage to the Products occurred during shipment. Written notice of incorrect quantities, incorrect item(s), damage to Products, and/or other nonconformity must be given as soon as possible and, in no event, later than ten (10) days after receipt of the Products by Customer. If Customer fails to give such written notice to Kelley with respect to any Products within ten (10) days after receipt of the Products, Customer shall be deemed to have irrevocably accepted such Products. Claims for damaged Products delivered by a carrier other than Kelley shall be made directly to the carrier. Kelley may in its sole discretion furnish suitable substitutes for materials unavailable for any of the foregoing reasons.

12. **Customer's Status as Merchant.** Kelley is in the business of selling Products to businesses who have skills and knowledge related to the purchase of the Products and other items for use in their businesses. Therefore, unless Kelley is notified to the contrary in writing, Customer acknowledges that it is a "merchant" under the Uniform Commercial Code (Wis. Stat. § 402.104).

13. **Force Majeure, Delays, and Changes.** Kelley shall not be liable for any delay in delivery or failure to deliver Products caused, directly or indirectly, in whole or in part, by fire, explosion, accident, flood, weather conditions, labor difficulties or shortages, war, acts of terrorism, insurrections, act or regulation of any governmental body, act of nature, act of God, shortage of Products, inability to procure or ship Products, inability to obtain permits or licenses, lack of supplies or raw materials, or any other circumstances or causes beyond the reasonable control of Kelley in the conduct of its business. Further, Customer acknowledges that the manufacturer of the Products may make changes in the formulation or manufacture of the Products as manufacturer deems appropriate without notice to Customer.

14. **Governing Law, Jurisdiction, and Venue.** These Terms and Conditions shall be construed, interpreted, and performed exclusively according to the laws, excluding conflict of law rules, of the State of Wisconsin, United States of America. The provisions of the Uniform Commercial Code, as adopted by the State of Wisconsin and not the United Nations Convention on Contracts for the International Sale of Goods, shall apply. Kelley and Customer agree that they are subject to the jurisdiction of the courts of the state of Wisconsin and that the Marathon County Circuit Court, located in Wausau, Wisconsin, shall be the exclusive venue for resolution of any dispute between Kelley and Customer.