

TERMS AND CONDITIONS OF SALE

Kelly Group, Inc.

1. **OFFER/ACCEPTANCE.** The purchase order for goods identified on the reverse side ("Goods") is expressly conditional upon the Buyer's assent to all the terms and conditions herein, including any terms additional to or different from those proposed by Buyer. These terms and conditions shall supersede any provisions, terms, and conditions contained in writing Buyer may give or receive, and the rights of the parties shall be governed exclusively by the provisions, terms, and conditions hereof. New buyers will be required to complete Seller's Credit application and may be required to furnish an irrevocable Letter of Credit, prepayment, UCC Security Interest or guarantee from its parent company or company officers. No purchase order shall be deemed final and binding upon Seller until Seller has executed and returned to Buyer its order acknowledgement. Buyer may not withdraw or cancel its purchase order once delivered to Seller (even if Seller has not yet returned its order and acknowledgement) without the express written consent of Seller, or as otherwise provided hereunder. Seller shall be under no obligation to accept any order submitted by Buyer.

2. **PRICES/LATE FEES.** Prices are as stated on the purchase order. Written proposal prices automatically expire 30 calendar days from the date issued and are subject to termination by notice from Seller within that period. A 1-1/2% per month service charge will be accrue on all accounts 30 days past due. If an account reaches 60 days past due, the account will automatically go on a pre-payment basis.

3. **TAXES.** Any taxes imposed with respect to the sale of the Goods are not included in the proposal price and such taxes shall be added to and paid as part of the purchase price when invoiced. All taxes assessed to this order or the Goods are the responsibility of the Buyer, including but not limited to local, and regional sales taxes and personal property tax, or the Buyer is to provide Seller with a valid tax exemption certificate. In the event that Buyer either fails to pay the tax or other charges as agreed above or fails to provide a valid exemption certificate, Buyer agrees to indemnify and hold Seller harmless from any liability and expense by reason of Buyer's failure. Such indemnification shall include, but not be limited to, attorneys' fees and/or other legal expenses relating to such failure.

4. **TITLE/DELIVERY/DELAYS.** Title to and risk of loss of the Goods shall pass to Buyer either upon delivery FOB Shipping Point or FOB Destination as indicated in the purchase order. If the purchase order does not specify either FOB Shipping Point or FOB Destination, title and risk of loss shall pass to Buyer FOB Shipping Point. Delivery dates stated, if any, are projections and are not a guarantee of delivery on a particular date. Any Goods unavailable at the time of the order will be backordered by Seller and will be shipped as soon as possible. Seller shall not be liable to Buyer or any third party for a failure or delay in delivering Goods, if such failure or delay results from (a) strikes, lockouts or other disputes or unrest; (b) fire, explosion, flood, natural disaster or act of God; (c) war, civil disturbance, riots or armed conflict; (d) governmental action, order, condemnation, sequestration, confiscation or other act directly or indirectly affecting Seller's performance hereunder; (e) Seller's inability to obtain Goods; or (f) any other cause beyond Seller's control.

5. **INSPECTION/CLAIMS.** Buyer shall, upon reasonable notice to Seller, have the right to inspect the Goods at the point of shipment. Upon delivery to the carrier, Seller's responsibility ceases. Claims for defective Goods, shortages, or for any other cause, shall be deemed waived and released by Buyer, unless made in writing to Seller within ten (10) days of receipt of Goods by Buyer.

6. **PERMISSIBLE VARIATIONS.** The Goods sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

7. **ADVICE.** The advice of Seller's staff is available to the trade, but Seller, not controlling or supervising the subsequent installation or modification of the Goods or their use after sale, does not warrant or guarantee such advice.

8. **PATENTS.** Except with regard to components of third parties incorporated into the Goods, Seller shall indemnify Buyer against attorney's fees and any damages or costs awarded against Buyer in the event any

legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any suit being brought to give Seller the opportunity to defend such suit and cooperates with Seller with respect to such defense.

9. BUYERS RIGHT OF TERMINATION. The Buyer may cancel an order for Goods or any part thereof by written notice to the Seller. Upon receipt of such notice, Seller shall discontinue work on such Goods and shall dispose of same as instructed by Buyer. Buyer shall pay to Seller that portion of the contract price equal to the percentage of the Goods completed by the Seller. In regard to unshipped material at time of cancellation, the Buyer shall pay Seller all labor and material costs incurred on the work, plus normal overhead and profit with respect to the work on the unshipped material, less salvage value if any.

10. SELLER'S RIGHT OF TERMINATION. Seller shall have the right to terminate this Agreement at any time upon written notice to Buyer upon the enactment, cancelation, or modification of any laws or regulations that affect the Goods.

11. BUYER'S RISK/INDEMNITY. IN THE EVENT THE BUYER SHOULD USE OR SEEK TO USE THE GOODS AS AN ENCLOSURE TO THE PROCESSING, SHELTER, STORAGE, CONTAINMENT OR ANY OTHER USE INVOLVING TOXIC, HAZARDOUS, UNSTABLE OR DANGEROUS SUBSTANCES, PRODUCTS, WASTE OR MATERIALS, THE BUYER SHALL DO SO AT ITS OWN SOLE RISK AND LIABILITY AND PERIL. Buyer agrees to defend, indemnify and hold the Seller harmless from any and all claims, losses, liabilities, suits and damages (including attorney's fees) arising, directly or indirectly, from Buyer's processing, sheltering, storage, containment or any other use of toxic, hazardous, unstable or dangerous substances, products, wastes or materials, or from the violation of any environmental laws relating to Buyer's use of the Goods.

12. DEFAULT. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms hereof or any other contract between Buyer and Seller, Seller may at its option defer shipment of Goods, require payment in cash or security for payment prior to shipment, or terminate this Agreement. Seller's remedies shall be cumulative and in addition to any other remedies provided at law or in equity. Buyer shall be liable to seller for all costs and attorneys' fees incurred in enforcing the terms and provisions of this Agreement.

13. PROPRIETARY INFORMATION. The Seller shall at all times have and retain title to all drawings, specifications, designs, and concepts furnished to Buyer in connection with the Goods, and Buyer acknowledges that all such drawings, specifications, designs, and concepts are the sole proprietary information and property of Seller. Buyer shall not disclose any such drawings, specifications, designs, and concepts to any person or entity. Upon Seller's request, Buyer shall promptly return any drawings, specifications, or designs delivered by Seller to Buyer in connection with the Goods.

14. WARRANTY/DISCLAIMER. EXCEPT AS SET FORTH HEREIN, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE ARISING FROM ANY COURSE OF DEALINGS OR PERFORMANCE OR USAGE OF TRADE. THE WARRANTIES CONTAINED HEREIN ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESSED OR IMPLIED WARRANTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER.

A. GOODS CONSISTING OF NEW KELLY KLOSURE PANELS AND ACCESSORIES. Subject to the limitations set forth below, Seller warrants to Buyer that the Goods will conform with the specifications specifically identified on the first page of this Agreement, and that the Goods and workmanship shall be free, under normal use and service, from defects in material and workmanship for a period of twelve (12) months from date of shipment ("Warranty Period"). If a defect is reported to Seller within ten (10) days of the date the defect was discovered or reasonably should have been discovered, whichever is earlier, and the report is made during the Warranty Period, Seller will repair or replace the Goods at its own expense and sole option.

B. GOODS CONSISTING OF USED KELLY KLOSURE PANELS AND ACCESSORIES. Subject to the limitations set forth below, Seller warrants to the Buyer that if used panels are purchased, the used Goods are fit to be used to erect a temporary construction site winter enclosure for a period of six (6) months ("Warranty Period"). Panels and accessories not fit to be used to erect a temporary construction site winter enclosure during the Warranty Period will be repaired or replaced by Seller at its expense and option provided that such defect(s) are reported to Seller within ten (10) days of receipt of the Goods.

REPAIRS NOT COVERED. Notwithstanding the foregoing, this warranty does not apply to (i) the failure of the Goods resulting from misuse, negligence or accident, (ii) any Good or part that shall have been repaired or altered by anyone who is not an authorized service representative of Seller in such a way that, in the sole judgment of Seller, its performance or reliability is adversely affected, (iii) failures of Goods, parts or accessory items not manufactured by Seller except to the extent of the warranty given by the actual manufacturer, (iv) failures in any way resulting from the use of parts, components or accessories not manufactured or approved by Seller, (v) normal maintenance and service, and (vi) deterioration of the appearance due to normal use or exposure.

15. REMEDIES EXCLUSIVE/DAMAGES. IT IS HEREBY EXPRESSLY AGREED THAT THE EXCLUSIVE REMEDIES THE BUYER HAS IN CONNECTION WITH THE BREACH OR PERFORMANCE OF ANY WARRANTY ON THE GOODS ARE THOSE SET FORTH HEREIN. IN NO EVENT WILL SELLER OR ANY AUTHORIZED REPRESENTATIVE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, CONTINGENT OR SECONDARY DAMAGES OR INJURIES INCLUDING BUT NOT LIMITED TO LOSS OR PROFITS, PRODUCTIONS OR PRODUCTS, RENTAL OR SUBSTITUTE EQUIPMENT OR OTHER COMMERCIAL LOSS. SELLER'S LIABILITY IS LIMITED TO THE REPAIR OR REPLACEMENT, F.O.B. PLANT, FOUND DEFECTIVE IN SELLER'S SOLE DISCRETION. REMEDIES SHALL IN NO EVENT EXCEED THE AMOUNT CHARGED FOR THE GOODS.

16. INDEMNIFICATION. Buyer agrees to indemnify and hold harmless Seller from any and all claims and legal action and to assume full responsibility for damage to property or for personal injury, including death, made by anyone whomsoever, which may arise out of the ownership or use of the Goods.

17. MISCELLANEOUS. The terms and conditions of this Agreement shall be governed and construed in accordance with the laws of the state of Nebraska. Buyer and Seller irrevocably agree that all actions or proceedings in any way, manner, or respect, arising out of or from or related to this Agreement or the transactions contemplated hereby shall be litigated in courts having situs within the city of Fremont, State of Nebraska. Buyer and Seller each hereby consent and submit to the jurisdiction of any local, state or federal courts located within Fremont, Nebraska and waive any right they may have to transfer or change the venue of any litigation brought against them by the other. The term "Seller" means Kelly Group, Inc. or an affiliate, and the term "Buyer" means the customer identified on the reverse side of this order. Buyer may not assign this Agreement without the Buyer's prior written approval. This Agreement can only be modified by a writing signed by both parties hereto. This Agreement is binding on the parties, their heirs, successors and assigns. Seller's failure to enforce any right hereunder shall not waive any right in respect to other or future occurrences. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other provisions hereof, all of which provisions are hereby declared severable.