



GENERAL TERMS AND CONDITIONS OF SALE

Kelley Electric, LLC (“Kelley”) provides these General Terms and Conditions (the “Terms and Conditions”) which apply to the estimates, proposals, quotations and/or invoices for goods and services (collectively, a “Proposal”) provided by Kelley to client (“Client”). These Terms and Conditions are hereby incorporated by reference into each Proposal and together with the Proposal represent the complete agreement between the parties (the “Agreement”).

1. **WORK AND MATERIALS.** The Proposal together with any attachments, defines the services to be performed by Kelley (the “Work”) and the materials to be provided by Kelley (the “Materials”).
2. **ACCEPTANCE AND EXECUTION.** Client shall indicate acceptance of the Agreement by either (a) signing the Proposal or (b) indicating Client’s acceptance of the Proposal terms by email or text message. This Agreement shall be considered executed on the date the Client accepts the Agreement by either method. Kelley reserves the right to withdraw the Proposal if not accepted by the Client within the earlier of 30 days of delivery to the Client or the date set forth in the Proposal.
3. **ENTIRETY.** Any proposal made by Client for additional or different terms and conditions, or any attempt by Client to vary the terms and conditions stated herein is hereby rejected. This Agreement shall constitute the entire agreement with reference to its subject matter and shall not be amended without Kelley’s written consent executed by an authorized officer of Kelley.
4. **CHANGE ORDERS.** As determined by Kelley as necessary to the safe and timely completion of the Work, Work may be added to or subtracted from the scope of work in the Proposal. Any modification or change to the Proposal is an amendment to this Agreement, and any such modification or change may only be authorized in writing by Client.
5. **COMPLETION OF WORK.** Kelley will use commercially reasonable efforts to meet any agreed upon performance dates; however, Kelley will not be liable in damages or otherwise for delays due to inclement weather, labor or any other cause beyond their control.
6. **TIME AND MATERIAL.** Work performed on a time and material basis includes the contracted amount per individual labor hour plus any Materials supplied by Kelley for use on behalf of Client. This may include the travel to and from the Work site, time spent preparing prior to the Work, time spent cleaning and organizing after the Work is performed, and debris disposal.
7. **PAYMENT.** Unless otherwise noted in the Proposal, payment is due upon receipt of the invoice. Failure to remit full payment within thirty (30) days of receipt will result in a finance charge of 1.5% per month and/or a suspension of Work. Client agrees to pay all fees incurred by Kelley for checks returned for insufficient funds or any other reason. If any payment obligation under this Agreement is not paid in full when due, Client promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.
8. **TITLE TO MATERIALS.** Title to Materials and Works shall not pass until payment for the Materials and Works have been made by Client.
9. **WORKMANSHIP.** All Work will be performed in a professional manner by personnel outfitted with the appropriate tools and equipment to properly complete the Work. All Work will be performed in accordance with guidelines and standards set forth by the Occupational Health and Safety Administration (OSHA) and National Electrical Code (NEC).
10. **LIMITED WARRANTY – MATERIALS PRODUCED OR MANUFACTURED BY THIRD PARTIES (“THIRD PARTY MATERIALS”).** CLIENT’S SOLE AND EXCLUSIVE WARRANTY FOR THIRD PARTY MATERIALS, IF ANY, IS THAT PROVIDED BY THE MATERIALS’ MANUFACTURER. THIS WARRANTY IS EXCLUSIVE, AND KELLEY MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS CONCERNING THE THIRD PARTY MATERIALS (WHETHER IMPLIED BY STATUTE OR OTHERWISE) AND SPECIFICALLY EXCLUDES SUCH WARRANTIES AND REPRESENTATIONS TO THE FULLEST EXTENT PERMITTED BY LAW. KELLEY SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. KELLEY SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING FROM THE FAILURE OF ANY THIRD PARTY MATERIALS TO BE SUITABLE FOR ANY PURPOSE WHATSOEVER. NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, KELLEY MAKES NO REPRESENTATION, WARRANTY OR GUARANTEES, EXPRESS OR IMPLIED, WITH REGARDS TO THE THIRD PARTY MATERIALS PROVIDED BY KELLEY.

11. LIMITED WARRANTY – MATERIALS PRODUCED OR MANUFACTURED BY KELLEY (“KELLEY MATERIALS”).

- a. Kelley warrants to Client that for a period of twelve (12) months from the date that the Kelley Materials are placed in operation (the “Warranty Period”), the Kelley Materials (i) will materially conform to the specifications set forth in the Proposal, (ii) will be free from material defects in materials and workmanship and (iii) will be delivered in full compliance with all applicable federal, state and local laws and regulations.
- b. This Limited Warranty extends only to products purchased from Kelley or an authorized reseller and only applies to the original purchaser. This Limited Warranty is not transferable to anyone who subsequently purchases the Kelley Materials from Client.
- c. Kelley’s sole and exclusive liability to Client and Client’s exclusive remedy with respect to Kelley Materials proved to Kelley’s satisfaction to be defective or nonconforming shall be limited, at Kelley’s option, to (a) repair or replacement of such Kelley Materials (with new or serviceable used parts that are equivalent or superior to new parts) without charge, upon the return of such Kelley Materials in accordance with Kelley’s instructions or (b) refunding the sales price received by Kelley for such Kelley Materials. All claims for breach of warranty must be presented to Kelley in writing within thirty (30) days after delivery to Client, regardless of their nature. Failure of Client to give such notice shall be deemed to be a waiver by Client of all claims with respect to the subject Materials.
- d. This Limited Warranty does not apply to any Kelley Material that has been damaged or rendered defective (a) as a result of accident, misuse, or abuse; (b) as a result of an act of God; (c) by operation outside the usage parameters stated in the Proposal; (d) by the use of parts not manufactured or sold by Kelley; (e) by modification of the Kelley Material; (f) as a result of war or terrorist attack; or (g) as a result of service by anyone other than Kelley or an authorized reseller or authorized agent.
- e. **EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY, KELLEY MAKES NO OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. KELLEY EXPRESSLY**

DISCLAIMS ALL WARRANTIES NOT STATED IN THIS LIMITED WARRANTY. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED TO THE TERMS OF THIS EXPRESS LIMITED WARRANTY.

12. **LIABILITY LIMITATIONS.** In no event shall either party be liable to the other in contract, tort or otherwise for incidental damages or any kind, including without limitation punitive or economic damages or lost profits, regardless of whether either party shall have reason to know or shall know of the possibility. Kelley is not liable for any claim made by a third party or made by Client on behalf of a third party. This limitation applies whether damages are sought or a claim is made under this warranty or as a tort claim (including negligence and strict product liability), a contract claim, or any other claim. This limitation cannot be waived or amended by any person.
13. **GOVERNING LAW.** Any dispute concerning the Agreement, including as to the legality, interpretation or application shall be governed by the laws of the State of Indiana, without regard to its principles of conflicts of laws. Client agrees that any disputes that concern the Agreement shall be brought in the state courts of the State of Indiana, County of Marion, and Client specifically waives any and all objection to venue in those courts. The prevailing party in any legal proceeding shall be entitled to recover its reasonable attorneys’ fees, court costs and other expenses from the non-prevailing party.
14. **NOTICES.** Notices to Kelley shall be sent to Kelley Electric, LLC, P.O. Box 7015, Muncie, IN 47308, and notices to Client shall be sent to Client’s last known billing address.
15. **MISCELLANEOUS.** The Agreement can only be amended by a writing executed and authorized by representatives of Kelley and Client. Kelley’s failure to strictly enforce any term or condition contained in the Agreement shall not constitute a waiver of Kelley’s right to strictly enforce such terms or conditions at any time in the future. If any part, term or provision of this Agreement is held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be illegal or invalid. This Agreement reflects the parties’ final and exclusive agreement as to the matters addressed in this Agreement and supersedes all prior and contemporaneous negotiations and agreements between the parties as to such matters.