

SUREFIL, LLC. TERMS AND CONDITIONS OF ACKNOWLEDGMENT

1. **ACKNOWLEDGMENT IS ACCEPTANCE.** This Acknowledgment is a confirmation of Buyer's acceptance of Seller's offer in accordance with the terms stated in Seller's Quotation, Seller's Supply Agreement (if any) and this Acknowledgment. To the extent Buyer's offer contained any terms inconsistent with the terms of this Acknowledgment, Seller's Quotation, or Seller's Supply Agreement, Buyer's offer is rejected and this Acknowledgment serves as a counter-offer that will be deemed accepted if not rejected in a written notice from Buyer received by Seller within twenty-four (24) hours of Buyer's receipt of this Acknowledgment.
2. **PRICE INCREASE.** The price stated on the Seller's Quotation, Seller's Supply Agreement, or on this Acknowledgment shall be subject to any increases in Seller's cost of materials. Unless otherwise specified on the reverse side of this Acknowledgment.
3. **PAYMENT TERMS.** Orders are cash upon shipment, F.O.B. shipping point. If credit is established, subsequent orders will be 15 days net unless and/or until otherwise specified by Seller. Buyers with approved credit, will pay a service charge of 1 1/2% per month if Buyer has not paid within 30 days of shipment.
4. **CREDIT.** Accounts will be opened only with firms or individuals on approved credit. Seller reserves the privilege of declining to make deliveries except for cash for any reason whatsoever at Seller's sole discretion.
5. **CANCELLATION.** In the event of cancellation by Buyer: a) Buyer will buy at the contract price any items completed at the time Seller receives a written cancellation notice from Buyer. b) Seller may, at its discretion, complete any unfinished goods and identify them to the contract to be purchased by Buyer as in paragraph 5a above. Work on the balance of the order will be stopped as promptly as reasonably possible and Seller shall be reimbursed for all actual expenditures, commitments, liabilities and costs, determined in accordance with generally accepted accounting practice, made or incurred with respect to those incomplete items, plus a 20% service charge on those costs. Any items that Seller can use economically to fill other active orders will be restocked at a 15% handling charge. In addition, Seller has the right to recover from Buyer all damages for cancellation, including but not limited to incidental, consequential and indirect damages and lost profits. Seller has the right to recover all damages by selling finished goods to retailers at a price agreed to buy the Seller and Retailer.
6. **QUANTITIES.** All quotations are based on Buyer accepting over-run or under-run on each individual item not exceeding 10% of quantities ordered. Where closer control of quantity is required, Buyer agrees to be bound to any special arrangements made by Seller in Seller's sole discretion.
7. **DELIVERIES.** Unless specifically stated to the contrary in Seller's Quotation or on the reverse side of this Acknowledgment, delivery will be within a reasonable time after the goods are manufactured by partial shipment packed in bulk. Seller makes no representations as to when Seller will manufacture the goods except that Seller will manufacture the goods at such time and rate as reasonably permitted by Seller's capacity and other commitments. Seller shall not be liable for any damages caused by any delays.
8. **SAMPLES.** If requested, the Seller will submit samples for approval when commencing operations. Any change in specifications can be made only at Buyer's direction and expense. If changes are to be made, Seller should be notified at once verbally or by written confirmation.
9. **WARRANTIES AND CLAIMS.** Seller warrants the goods to be manufactured according to Buyer's specifications within the tolerances contained in paragraph 10 below, except as limited by any other provision of Seller's Quotation, Seller's Supply Agreement, or this Acknowledgment. Buyer must notify Seller of any alleged defects within thirty (30) days of Buyer's receipt of the goods. Buyer's remedy shall be limited to Seller's repair, replacement, credit or completion of the order within the limitation of paragraph 6, QUANTITIES. Seller shall have no liability and gives no warranty with respect to goods which are further processed by Buyer which are changed in dimension or characteristics from the goods as ordered. Seller is not responsible for product stability or any label claims made by the Buyer. Claims for shortage must be made within thirty (30) days from receipt of goods, and in every case the weights found in the shipment, including tare, must be given and Seller must advise the method used in arriving at a count of the parts. **NOTWITHSTANDING ANY OTHER PROVISION IN SELLER'S QUOTATION, OR ACKNOWLEDGMENT OR IN ANY FORM OF BUYER, SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALSO DISCLAIMS AND EXCLUDES ALL LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR OTHER SPECIAL DAMAGES OF SELLER, INCLUDING LOST PROFITS, FOR BREACH OF WARRANTY OR OF CONTRACT OR OTHERWISE.** The warranty provided in this paragraph is the sole and exclusive remedy of Buyer against Seller.
10. **INSPECTION.** Inspection by Seller is made in accordance with MIL-STD 105D using a 1.5AQL. If tighter sampling plans are required, it is at Buyer's expense, and only such parts proven to be out of tolerance with written specifications supplied to Seller by Buyer may be returned with a claim for repair, credit, or replacement, as covered by paragraph 9, WARRANTIES AND CLAIMS, and paragraph 6, QUANTITIES. No item may be returned without permission. No charges for sorting or rework may be issued by Buyer without written permission of Seller signed by an Officer of the company.
11. **CHANGE PARTS, DIES, TOOLS, ETC.** Tools, dies, jigs, fixtures, gages, and their engineering and design are an integral part of Seller's manufacturing processes. Therefore, separate quotation to or payment by the Buyer for these items, supplied by Seller, conveys neither ownership nor the right of removal from Seller's factory; Seller retains ownership and the right to possession. All change parts costs will be the responsibility of the Buyer and will be paid in full, prior to production.
12. **SHIPMENT.** In ordering, Buyer should state explicitly the method of shipment preferred and in the absence of shipping directions Seller will use discretion, forwarding by express or parcel post when packages are small and therefore liable to be lost in transit by freight.
13. **BUYER'S MATERIALS.** Agreements for use of materials supplied to Seller by Buyer are made subject to delivery of the amount of material as specified by the Seller, F.O.B. Seller's plant, and are subject to change if material furnished by Buyer is delayed or defective. Chemical and physical specifications are the sole responsibility of Buyer, and parts manufactured from Buyer's materials which otherwise conform to specifications shall be accepted by Buyer. Buyer is responsible for all packaging, raw materials, supplies, etc., required for production and will pay Seller, invoice cost plus administrative fee. Buyer is responsible for damages to Seller's equipment and the cost of lost production resulting from delayed and/or defective materials supplied to Seller by Buyer. Seller does not guarantee to deliver more than 90% of the quantity ordered in accordance with paragraph 6, QUANTITIES.
14. **INDEMNIFICATION. BUYER AGREES TO INDEMNIFY AND HOLD SELLER, ITS AGENTS AND EMPLOYEES, HARMLESS** from and against any and all claims and causes of action brought against Seller and from any and all damages, losses, expenses, attorney's fees, costs, and liabilities sustained by Seller arising out of any claimed improper manufacture, formulation, specification, materials or repairs provided by Seller. **BUYER'S OBLIGATION UNDER THIS PARAGRAPH SHALL INCLUDE THE OBLIGATION TO INDEMNIFY AND HOLD SELLER HARMLESS FOR SELLER'S NEGLIGENCE, WHETHER ACTIVE, PASSIVE, CONCURRENT OR OTHERWISE, IN THE PERFORMANCE OF ITS OBLIGATIONS.**
15. **PATENTS.** Buyer shall indemnify and hold Seller, its agents and employees, harmless from any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right or claim of unfair trade or unfair competition, arising out of the manufacture, sale or use of goods sold, to the extent those goods are manufactured, sold or used pursuant to specifications, drawings and representations furnished by Buyer to Seller.
16. **TITLE AND RISK OF LOSS.** Title and risk of loss for damage to the goods pass to Buyer upon delivery of goods to a carrier. Seller shall not be liable for damage to any shipment while in transit. Buyer shall be responsible for accepting shipment and filing claims for damages or shortage with the carrier.
17. **TAXES, EXTRA.** Any tax imposed by any present or future law of federal, state or municipal authority on the manufacturer or sale of the articles purchased hereunder, and required to be paid by Seller, shall be added to the amount to be paid by Buyer.
18. **ASSIGNMENT.** Buyer shall not assign its rights or delegate its duties without Seller's prior written consent.
19. **AMENDMENT.** The agreement between the parties (the terms of which are contained in Seller's Quotation, Seller's Supply Agreement, and Acknowledgment) may be amended only by a writing signed by Seller and Buyer.
20. **SEVERABILITY.** If any provisions of the agreement between the parties in invalid or unenforceable, all other provisions of Seller's Quotation and Acknowledgment shall remain in full force and effect.
21. **STATE LAW.** The agreement between the parties shall be governed in all respects by the laws of the State of Michigan.
22. **JURISDICTION.** Seller and Buyer agree that any action arising out of the sale of goods or services referred to herein will be brought, heard and decided exclusively by a court sitting in the State of Michigan.
23. **SUCCESSORS.** The terms of the agreement between the parties shall inure to the benefit of and be binding on the successors and assigns of the parties.
24. **ENTIRE AGREEMENT.** There are no other agreements, warranties, terms or conditions relating to the goods or services to be provided except those contained in Seller's Quotation and Acknowledgment.
25. **PATENT INFRINGEMENT INDEMNIFICATION.** Buyer will assume liability for and will defend, indemnify, and hold seller harmless from any and all loss, including attorneys fees, with respect to any claims for patent infringement, direct or contributory, relating in any way to Seller's sale or manufacture of product. The foregoing applies without regard to whether the product is designed by Buyer or seller. Seller will advise Buyer of any potential patent infringement claims or disputes of which Seller is aware.
26. **CONFLICTING PROVISIONS.** In the event of a conflict between the provisions of the various documents exchanged by the parties, the following order of priority shall prevail and the provisions of the document having the highest priority shall govern:
 - (1) the Terms and Conditions of Seller's Terms and Conditions of Acknowledgment;
 - (2) the Supply Agreement (if any);
 - (3) the Seller's Quotation; and
 - (4) Buyer's offer. Purchase

Initials/Date _____
Order Number _____