

SUREFIL, LLC
(“Surefil”)
STANDARD TERMS OF CAPITAL EQUIPMENT PURCHASE

These Surefil, LLC Standard Terms of Capital Equipment Purchases are attached to a Surefil Purchase Order directed to a seller designated in the Purchase Order (“**Seller**”) and are a part of the Purchase Order and the contract formed by Seller’s acceptance of the Purchase Order (“**Contract**”). In these Standard Terms, “**this order**” means the Purchase Order, “**goods**” means the equipment described in this purchase order, and the documentation and other items that Seller is required to deliver to Surefil under this order and “**services**” means any design, installation, training and other, services that Seller is required to provide to Surefil under this order.

1. **Price and Payment.** Unless Surefil agrees otherwise in writing, Surefil shall not be required to pay any sales, use, or other taxes arising because of Surefil’s purchase from Seller. Surefil shall not be required to pay any late charge, interest, finance charge, or similar charge. Surefil’s payment of the purchase price does not indicate its acceptance of the goods or services. Payment terms, including discount periods, shall be specified in the purchase order.

2. **Delivery and Force Majeure.** Unless Surefil agrees otherwise in writing, the goods shall be delivered F.O.B. at the “Ship To” facility identified in this order, except that Surefil may at its option take delivery of all or any part of the goods at Seller’s facility. Time of delivery or performance is of the essence, and Surefil’s stated delivery or performance date cannot be extended for any reason, including delays in manufacture or shipment that Seller cannot control. Seller shall not, however, be liable for any, non-performance or delay in performance caused solely by a strike, lockout, riot, war, insurrection, act of God or public enemy, if Seller immediately notifies Surefil of the event and gives Surefil a detailed description of the non-performance or delay that will be caused by it. Surefil shall then have the right to terminate the Contract, without liability to Seller. Except as provided in this paragraph, no event or circumstance shall limit Seller’s liability for any non-performance or delay, even if the event or circumstance is beyond Seller’s control.

3. **Risk of Loss.** Risk of loss of the goods shall remain with Seller until the goods shall have been delivered and placed under the control of Surefil personnel.

4. **Excess, Installment, and Early Deliveries.** If Seller delivers more goods than Surefil ordered, Surefil shall not have to pay for the excess. Unless Surefil agrees otherwise in writing, Seller shall deliver all of the goods in a single delivery and not in installments. Surefil’s acceptance of a delivery containing less than the required quantity shall not relieve Seller of its obligation to deliver the balance of the ordered goods at the price and on the other terms specified in this order. If Seller delivers the goods before the scheduled delivery date, Surefil may, at Seller’s expense and risk, either store them or return them to Seller. Surefil’s acceptance of an early delivery shall not change the payment terms.

5. **Representations and Warranties About the Goods and Services.** Seller represents, warrants and agrees that (i) the goods and services shall be merchantable, of good material, workmanship, and quality, fit for the purposes for which Surefil intends them and free

from faults and defects, (ii) the goods and services shall conform to any samples, drawings, specifications, performance criteria, standards or other requirements that are referred to on the face of this order or that Surefil has otherwise specified or agreed to in writing, (iii) the goods, their manufacture and sale, and the services shall comply with all applicable federal, state, and local laws, regulations, standards and orders, including, without limitation, the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970, as amended, and (iv) all documentation that this order requires Seller to deliver to Surefil shall be written in a clear, understandable and professional manner and shall be merchantable and fit for the purpose for which Surefil intends it. If Surefil requests it, Seller shall give Surefil certificates of compliance with applicable laws and regulations. Surefil's approval of a sample, drawing, specification or standard shall not relieve Seller of any of its warranties under this paragraph, including, without limitation, its warranties of merchantability, fitness and compliance with laws. Seller's warranties extend to future performance of the goods and services and survive inspection, tests, acceptance, and payment.

Equipment warranty will exist for _____ operating hours or two years, whichever is longer, following final acceptance at Surefil facility.

6. **Representations and Warranties About Seller.** Seller represents and warrants to Surefil that (i) Seller has all necessary experience, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the contract formed pursuant to this order, (ii) the contract formed pursuant to this order is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, (iii) Seller is solvent and (iv) Seller has not offered or given, and shall not offer or give, any gratuity or thing of value to any employee of Surefil or of any affiliate of Surefil.

7. **Indemnity.** Seller shall indemnify and hold Surefil harmless (and defend Surefil, if it requests) as to any claims, liabilities, losses, damages and expenses brought against Surefil or incurred by Surefil because of (i) any breach by Seller of any of its representations or warranties to, or agreements with, Surefil, (ii) any claim that any of the goods or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (iii) any death, injury, or damage to any person or property alleged to have been caused by the goods or services or by Seller's manufacture of the goods or performance of the services.

8. **Inspection.** Surefil's employees or agents may at any time enter Seller's premises to inspect and test the goods, Seller's process of manufacture of them, and any materials, components, or work-in-process that is to be used in their manufacture.

9. **Changes.** Surefil may at any time, by written notice to Seller, change this order or the contract formed pursuant to this order as to (i) designs or drawings of or specifications for the goods or services, (ii) time or place of delivery or performance, (iii) method of packing or shipment, or (iv) quantity of the goods or extent of the services. If this causes a change in Seller's cost or time of performance, an equitable adjustment shall be made in the price or time for delivery or performance, or both, if Seller give Surefil a written request for an adjustment within 20 days after Surefil notifies Seller of the change. All changes must be documented and approved in writing by the Surefil project manager before authorizing any changes.

10. Termination at Surefil's Option. Surefil may terminate this order or any contract formed pursuant to this order, in whole or in part, at any time by written notice to Seller stating the extent and effective date of termination. Upon receipt of the notice, Seller shall, unless otherwise directed by Surefil, stop work and acquisition of materials under the contract and protect property in Seller's possession in which Surefil has or may acquire an interest. Not later than 30 days after the effective date of termination, Seller may submit to Surefil its claim, if any, for reasonable compensation for termination. Surefil shall have the right to audit and inspect Seller's books, records, and other documents relating to the termination claim. If the parties cannot agree within a reasonable time upon the amount of fair compensation for the termination, Surefil will pay to Seller the following amounts without duplication: (i) the purchase order price for goods or services completed in accordance with the provisions of this purchase order but not previously paid for, and (ii) the actual costs incurred by Seller and properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of the contract, but not to exceed the contract price for the terminated portion of the contract, less any payments made by Surefil. These amounts will be payable after Seller delivers to Surefil any completed goods. Termination under this paragraph shall not impair Seller's obligations under *Paragraphs 5, 7, 11, 12, 13, 18 and 19* of these Standard Terms.

11. Surefil's Rights.

(a) Without limiting other rights and remedies available to Surefil, Surefil may, at its option, (i) return nonconforming goods to Seller, at Seller's risk and expense, and require Seller either to give Surefil full credit against the price, or promptly to repair or replace the goods at Seller's risk and expense; (ii) retain the goods and set-off losses against any amount due Seller; or (iii) repair or replace the goods and charge Seller with the expense.

(b) If at any time Seller defaults in the performance of any of Seller's obligations to Surefil or Seller repudiates any contract formed pursuant to this order or any warranty or representation of Seller to Surefil in or in connection with the contract shall be false or misleading, then Surefil may terminate the contract, in whole or part, and Seller, to the extent demanded by Surefil, shall immediately deliver to Surefil all finished and unfinished goods, work-in-process and raw materials acquired for use in the manufacture or processing of the goods. Payment of part or all of the purchase price by Surefil shall not be a precondition to Seller's obligation to make the delivery. After Surefil's damages for Seller's breach or repudiation (including, without limitation, any cost of "cover" or of completing the manufacture or processing of the goods) are determined, Surefil shall pay to Seller any excess of (i) any unpaid part of the purchase price properly allocable to any such goods, work-in-process and raw materials delivered to Surefil over (ii) Surefil's damages. Termination by Surefil under this paragraph shall not impair Seller's obligations under *Paragraphs 5, 7, 11, 12, 13, 18 and 19* of these Standard Terms.

(c) In addition to Surefil's rights set out in this order, Surefil has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages resulting from any breach by Seller. Surefil shall not lose any right just because it does not exercise it. Surefil shall have the full statutory period of limitations to bring any action arising out of Surefil's agreement with Seller. A reasonable time for Surefil to notify Seller of any breach is not less than two years from when Surefil discovers the breach.

12. **Surefil Items.** Any drawings, specifications, documents and other information and any tooling, equipment or other property that Surefil shall furnish to, or acquire from, Seller in connection with Seller's manufacture of the goods or performance of the services ("**Surefil Items**") shall remain Surefil's property. Seller shall (i) maintain in good condition any Surefil Items, (ii) mark the Surefil Items "**PROPERTY OF SUREFIL, LLC**", (iii) not commingle the Surefil Items with property of Seller or third parties, (iv) allow Surefil to inspect and examine them at any time, and (v) return them to Surefil upon its request.

13. **Insurance.** Seller shall maintain insurance coverage that will fully protect both Seller and Surefil from any and all claims and liabilities of any kind or nature for property damage, personal injury, death and economic damage, to any person, that shall arise from the goods or their use or the performance of the services or any activities connected with the services. Seller shall maintain employee's liability and compensation insurance that will protect Surefil from any and all claims and liabilities made by Seller or any employee or agent of Seller under any applicable worker's compensation or occupational disease acts. All insurance required by this paragraph shall be in amounts and coverages, and shall be issued by insurers, that shall be satisfactory to Surefil. Upon request by Surefil at any time, Seller shall furnish Surefil with certificates evidencing required insurance.

14. **Work on Premises.** If performance of services or delivery or installation of goods by Seller involves operations by its employees or subcontractors on the premises of Surefil or of an affiliate of Surefil, (i) Seller shall at all times enforce strict discipline and maintain good order among all persons engaged, in the activity on the premises and shall cause them to comply with all fire prevention and safety rules and regulations in force at the premises, and (ii) Seller shall keep the premises free from accumulation of waste materials and rubbish caused by its employees or subcontractors and upon completion shall promptly remove all of Seller's equipment and surplus materials.

15. **Services.** If this order covers services, (i) Seller is an independent contractor, and neither Seller nor any of Seller's employees or agents shall be considered agents or employees of Surefil, and (ii) Seller shall furnish, at Seller's expense, all labor, materials, equipment, transportation, facilities, and other items necessary to perform the services,

16. **Confidentiality.** Seller shall not sell or offer to sell to anyone other than Surefil any goods made in accordance with any drawings or specifications that Surefil furnishes to Seller. Seller shall maintain the confidentiality of, and shall not disclose or use or permit to be disclosed or used or to be viewed by any third party (including any of Seller's suppliers), the goods, any designs of or specifications for the goods, any Surefil Item or any information concerning Surefil's business, operations or activities, including, without limitation, information concerning Surefil's present or proposed products, product developments, plans, strategies, finances, know-how, sales, customers and marketing or sales techniques ("**Confidential Information**"), except that Seller may disclose Confidential Information to a third party (other than a competitor of Surefil or a subsidiary or affiliate of a competitor) to the extent disclosure is necessary in order for Seller to perform its obligations under any contract formed pursuant to this order. If there is a breach of this paragraph or *Paragraph 11* (either actual or threatened) by Seller, Surefil's remedies at law will be inadequate. Therefore Surefil shall have the right of

specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and Surefil's rights and remedies shall be cumulative Property.

17. **Intellectual Property.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, copyrights in any copyrightable works, trademarks, trade names, trade dress, service marks, names, software and other works and matters created or developed by Seller in the course of Seller's performance of the services ("**Intellectual Property**") shall be the sole property of Surefil, and Seller assigns and agrees to assign, to Surefil all right, title and interest that Seller now has or in the future acquires in the Intellectual Property. All such copyrightable works shall be considered "works made for hire" within the meaning of the Federal Copyright Act of 1976, as amended, and under the equivalent laws of any other country. Seller shall sign and deliver to Surefil all assignments and other documents, and Seller shall take all other actions, that Surefil shall request for the purpose of perfecting Surefil's ownership of and title to the Intellectual Property. If the goods or their design are subject to any patent rights held by buyer then Seller grants to Surefil an irrevocable, non-exclusive, royalty-free license of the patent rights to the extent necessary to enable Seller to repair or rebuild any or all of the goods. This license is in addition to all patent licenses impliedly granted to Surefil as a purchaser of the goods.

18. **Other Terms.** Seller shall not have and waives any security interest in or lien (including any statutory lien or common law) upon any Surefil Items or the goods. Seller may not delegate or subcontract any of its obligations under this order without Surefil's written consent. Surefil may deduct from, and set off against, any amounts at any time owing to Seller under this order any damages or other amounts then owing to Surefil by Seller, whether under this order or otherwise. The Equal Opportunity Clause in Section 202 of Executive Order No. 11246, as amended, is incorporated in this order by reference. If at any time Surefil has reasonable grounds for insecurity as to Seller's performance, Seller shall provide adequate assurance of due performance within 10 days after demand by Surefil, which shall be considered to be a reasonable time.

19. **Applicable Law.** Any contract formed pursuant to this order shall be governed by, and interpreted according to, Michigan law. If Surefil and Seller get into a lawsuit, it may be handled by any state or federal court in Kent County, Michigan, and Seller irrevocably consents that the court shall have personal jurisdiction over Seller and waives any objection that the court is an inconvenient forum.

20. **Complete Agreement.** Seller has not made any promises or representations to Surefil, and Surefil has not made any to Seller, that are not in this order. Any change in, or waiver of, any provision of this order or any contract formed pursuant to this order must be set forth in writing signed by Surefil.