

TERMS AND CONDITIONS

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2. The COMPANY User Agreement

Welcome to the COMPANY website (also referred to as the “Site”). This User Agreement (“Agreement”) contains the terms, covenants, conditions, and provisions (the “Terms and Conditions”) upon which you (the “User,” “You,” or “Your”) may access and use this Site.

Web Site Last Updated: 06/25/2023

3. Terms and Conditions

By accessing, viewing, or using this Site, You indicate that You understand and intend these Terms and Conditions to be the legal equivalent of a signed, written contract and equally binding, and that You accept such Terms and Conditions and agree to be legally bound by them. Please note that the COMPANY reserves the right to change, at its discretion, the Terms and Conditions under which this Site and its offerings are extended to You. Your continued use of this Site following such modifications will be conclusively deemed acceptance by You of any changes to these Terms and Conditions.

4. License Grant

This Agreement provides You with a personal, revocable, nonexclusive, nontransferable license to use this Site conditioned on Your continued compliance with the Terms and Conditions of this

Agreement. You may print and download materials and information on this Site solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in such materials and information. As a further condition of use of this Site, You warrant to the COMPANY that You will not use this Site for any purpose that is unlawful or otherwise prohibited by these Terms and Conditions.

5. Corrections and Changes

While the COMPANY endeavors to keep the materials on the Site up to date, the COMPANY cannot and does not assume responsibility for any errors or omissions in these materials. The COMPANY further does not warrant the accuracy or completeness of the information, text, graphics, links, or other items contained within these materials. The COMPANY may make changes to these materials, or to the products or services described herein, at any time without notice, and makes no commitment to update the information contained herein.

6. Confidentiality of Site

While the COMPANY has endeavored to create a secure and reliable Site, please be advised that the confidentiality of any communication or material transmitted to/from this Site over the Internet cannot be guaranteed. Accordingly, the COMPANY is not responsible for the security of any information transmitted via the Internet. You assume the sole and complete risk for using this Site.

7. Intellectual Property Rights

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Use of this Site is entirely at Your own risk and is subject to all applicable state, national, and international laws and regulations. ALL MATERIALS ON THIS SITE ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. Please note that some jurisdictions may not allow the exclusion of implied warranties, so some of the above exclusions may not apply to You.

THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH: (A) YOUR ACCESS TO, OR USE OF, THE SITE; (B) ANY PRODUCTS, SERVICES, INFORMATION, ACTIVITIES, AND/OR MATERIALS AVAILABLE ON OR THROUGH THE SITE; (C) ANY BREACHES OF SECURITY INVOLVING THE SITE OR YOUR ACCOUNT, OR ANY LACK OF AVAILABILITY OR OPERATIONAL PROBLEM OF, THE SITE; OR (D) ANY VIRUSES OR OTHER CODE THAT MAY AFFECT YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY AS A RESULT OF YOUR USE OF THE SITE. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages. In such jurisdictions, our liability is limited to the greatest extent permitted by law.

9. Third Party Web Sites

The COMPANY may provide links, in its sole discretion, to other sites on the World Wide Web for Your convenience in locating related information and services. These sites have not necessarily been reviewed by the COMPANY and are maintained by third parties over which the COMPANY exercises no control.

THE COMPANY MAKES NO WARRANTY OF ANY KIND IN CONNECTION WITH ANY THIRD-PARTY SITE OR ANY INFORMATION, PRODUCTS, SERVICES, OR MATERIALS AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITE.

The COMPANY does not endorse, and shall not be liable in connection with, the content, the accuracy of the information, and/or quality of products or services provided by or advertised on these third-party web sites. Use of third-party sites is at Your own risk.

10. Code of Conduct

You agree to not do the following:

(a) Restrict or inhibit any other User from using and enjoying the Site. This includes, without limitation: (1) using, or attempting to use, any account without the owner's permission, (2) obtaining or soliciting another person's password or other personal information under false pretenses, or (3) impersonating another User or otherwise misrepresenting Yourself to the COMPANY, the Site's systems, or other entities.

(b) Interfere (or attempt to interfere) with the operation of the Site. This includes, without limitation: (1) interfering with, defeating, or circumventing any security function of the Site, or attempting to do so, or (2) accessing, or attempting to access, any portion of the Site that You are not authorized to access. Unauthorized access (or attempts) may subject You to civil and/or criminal penalties.

- (c) Post, store, or transmit any unlawful, threatening, defamatory, obscene, inflammatory, pornographic, profane, or otherwise objectionable (as determined by the COMPANY in its sole discretion) information or material.
- (d) Post, store, or transmit any information or material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law.
- (e) Post, store, or transmit any advertising, promotion, or solicitation of goods or services for commercial purposes.
- (f) Use the Site to post, store, or transmit any information or software that contains a virus, worm, Trojan horse, or other harmful or disruptive component.
- (g) Use the Site to post, store, or transmit materials in violation of another party's copyright or other intellectual property rights. You are solely responsible for determining whether any material You post, store, or transmit is subject to a third party's rights.
- (h) Use the Site for any unlawful purposes.
- (i) Modify, adapt, sublicense, translate, resell, retransmit, reverse engineer, decompile, or disassemble any portion of the Site.

11. Law Enforcement

Actual or attempted unauthorized or unlawful use of the Site may result in criminal and/or civil prosecution. For Your protection, the COMPANY reserves the right to view, monitor, and record activity on the Site without notice or permission from You. Any information obtained by monitoring, reviewing, or recording is subject to review by law enforcement organizations in connection with the investigation or prosecution of possible criminal activity on the Site. The COMPANY may also comply with all court orders involving requests for such information.

12. Term and Termination

This Agreement will take effect at the time You begin using this Site (thereby indicating acceptance of these Terms and Conditions) which obligations contained herein will continue in perpetuity in relation to Your use of this Site or the Materials on this Site. The COMPANY reserves the right at any time and for any reason to deny You access to the Site or any portion thereof, and to terminate this Agreement. Termination will be effective without notice. Such termination shall not affect Your obligations pertaining to your use of this Site or the Materials on this Site.

13. Privacy Policy

Please see the COMPANY's Privacy Policy for a summary of the COMPANY's practices regarding collection and use of non-public personal information. By using this Site, You consent to the COMPANY's collection and use of personal data as outlined therein.

14. Submissions

Any ideas, suggestions, information, know-how, material, or other content (collectively, “content”) submitted to and received through this Site will be deemed to include a royalty-free, perpetual, irrevocable, transferable, worldwide, nonexclusive right and license for the COMPANY to adopt, publish, reproduce, disseminate, transmit, distribute, copy, use, create derivative works, display (in whole or part), or act on such content without additional approval or consideration, in any form, media, or technology now known or later developed for the full term of any rights that may exist in such content. The COMPANY may refuse to post, or may remove at any time, any content submitted to and received through this Site for any reason.

15. Digital Millennium Copyright Act

The Digital Millennium Copyright Act of 1998 (the “DMCA”) provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under United States copyright law. The COMPANY reserves the right to remove any material on the Site which allegedly infringes another person’s copyright. Notices to the COMPANY regarding any alleged copyright infringement on the Site should be directed to: SURFINDAGO, LLC ATTN: Administrative Department; at: surfindagollc@protonmail.com.

16. Limitation of Service

The COMPANY reserves the right to limit, in its sole discretion, the availability of the Site and/or the provision and quantity of any product, service, and/or information to any person, geographic area, or jurisdiction it so desires.

17. Indemnification

You agree to defend, indemnify, and hold harmless the COMPANY and its parent, subsidiaries, affiliates, members, officers, employees, interns, agents, predecessors, successors, and assigns, from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys’ fees and litigation expenses) relating to or arising from Your use of the Site, any breach by You of this Agreement, or any other matter for which You are responsible hereunder or under law.

18. Waiver

Failure to insist on strict performance of any of the Terms and Conditions of this Agreement will not operate as a waiver of any subsequent default or failure of performance. No waiver by the COMPANY of any right under these Terms and Conditions will be deemed to be either a waiver of any other right or provision or a waiver of that same right or provision at any other time.

19. Governing Law & Dispute Resolution

(a) Governing Law. This Agreement shall be construed and governed by the internal laws of the state of Missouri (irrespective of its choice of law principles).

(b) Arbitration. You and the COMPANY mutually agree that any controversy, conflict, dispute, or claim under statutory or common law arising out of or relating to this Agreement, or the breach thereof shall be settled by binding arbitration; and this agreement to arbitrate shall be valid, irrevocable, and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally; and this agreement to arbitrate shall survive expiration, termination, or rescission of this Agreement; and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(c) You and the COMPANY mutually agree that the COMPANY shall be responsible for choosing a single arbitrator; arbitration shall be conducted in Missouri; and the parties shall bear their own individual expenses for initiating arbitration but that the prevailing party in any arbitration concerning this Agreement shall be entitled to arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, which shall be paid as provided in the award. You and the COMPANY mutually agree that the arbitrator shall not have any authority to change any term(s), provision(s), condition(s), or obligation(s) of this Agreement by additions, subtractions, or alterations of the Agreement's term(s), provision(s), condition(s), or obligation(s) nor shall the arbitrator exceed his or her authority either by determining a matter not submitted to him or her or by not following the rules established by this Agreement concerning arbitration. You and the COMPANY mutually agree that the arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing and that any appearance at the hearing waives such notice. You and the COMPANY mutually agree that the arbitrator may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon the arbitrator's own motion, may postpone the hearing to a time not later than the date fixed by this Agreement for making the award unless the parties mutually consent to a later date. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear and, if necessary, a court on application may direct the arbitrator to proceed promptly with the hearing and determination of the controversy. You and the COMPANY further mutually agree that the parties are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at the hearing. All parties agree that, subject to the provisions and conditions by this Agreement for vacating an award, the decision of the arbitrator will be binding and is the exclusive remedy.

(d) You and the COMPANY mutually agree that the award shall be made within 30 days after the hearing concludes; that the award shall be in writing and signed by the arbitrator; that the arbitrator shall deliver a copy to each party personally or by registered mail; that the award may include monetary relief and/or an order for specific performance; that although the award need not address individually each point of the submission, the arbitrator must consider each issue submitted for the award to be adequate and the award must resolve the entire controversy submitted; and that the parties may apply to the court for confirmation of the arbitrator's award.

(e) You and the COMPANY mutually agree that upon application of a party, the court may vacate an award for the following reasons:

- (1) The award was procured by corruption, fraud, or other undue means. However: A mistake of law or a mistake of fact, gross errors by the arbitrator, and award amounts in excess of what a court would have awarded are not sufficient reasons, *per se*, to vacate an award. To warrant vacating an award for fraud, the fraud must appear on the face of the award.
 - (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in the arbitrator or misconduct prejudicing the rights of any party. However: An arbitrator's relationship with a party, *per se*, shall not be evidence of partiality. Because it is not unusual for the arbitrator to know one or both of the parties or to have business contacts with them, the dividing line is where the relationship is significant enough to suggest that it would interfere with the arbitrator's fairness. And although the arbitrator's conduct of a hearing also may be evidence of partiality if that conduct reveals the requisite bias, the party charging partiality must allege specific acts of the arbitrator which are evidence of the bias. Where the party has knowledge of facts indicating partiality but does not challenge the arbitrator's partiality until after the award is issued, the challenge will be waived. To mitigate against the natural tendency to see partiality in an arbitrator only after an adverse award, the party must ask the arbitrator to disqualify him- or herself as soon as there is evidence of partiality.
 - (3) The arbitrator exceeded his or her power or authority. The arbitrator exceeds his or her power or authority when he or she determines a matter not submitted to him or her; fails to follow the rules for arbitration established by this Agreement; fails to resolve each issue submitted; allows a third party to participate in a hearing when that third party was not a party to the arbitration agreement; or disregards the parties' directives or makes an award not contemplated by the agreement. However: Exercising discretion in the making and implementing of procedural and evidentiary rules for arbitration (insofar as these discretionary rules by the arbitrator do not replace or displace the rules for arbitration established by this Agreement) is not, without evidence of other violations as enumerated in this Agreement or by law, exceeding power or authority.
 - (4) The arbitrator refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the rules of this Agreement or the law, as to prejudice substantially the rights of a party.
- (f) You and the COMPANY mutually agree that any and all arbitration shall be individualized rather than class or collective action, and any controversy, conflict, dispute, or claim under statutory or common law arising out of or relating to this Agreement, or the breach thereof shall be heard in separate proceedings.
- (g) You and the COMPANY mutually agree that any arbitration proceedings shall be regarded as settlement negotiations and any communication relating to the subject matter of such disputes made during the resolution process by any participant, arbitrator, conciliator, mediator, or any

other person present at the dispute resolution shall be a confidential communication. You and the COMPANY further mutually agree that no admission, representation, statement, or other confidential communication made in setting up or conducting such proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery and no person who serves as an arbitrator, conciliator, or mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the arbitration, conciliation, or mediation.

(h) If the aforementioned agreement to arbitrate or its application is invalid or unenforceable, You and the COMPANY mutually agree that any legal proceeding with respect to any dispute will be tried in a court of competent jurisdiction by a judge without a jury in Missouri. You and the COMPANY mutually agree to waive any right to a jury trial in any such proceeding.

(i) This arbitration agreement notwithstanding, You agree that in the event of any breach or threatened breach of this Agreement by You, the COMPANY may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect the COMPANY against any such breach or threatened breach.

20. Costs & Attorneys' Fees

In any action to enforce this Agreement, the prevailing party will be entitled to reasonable costs and attorneys' fees.

21. Severability

If any part of these Terms and Conditions is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and the liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most clearly matches the intent of the original provision and the remainder of these Terms and Conditions shall continue in effect.

22. No Agency

No joint venture, partnership, employment, or agency relationship exists between You and the COMPANY as a result of this Agreement or Your utilization of this Site.

23. No Rights or Benefits

This Agreement is not intended to, and does not, create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or in equity by any party against the COMPANY, its parent, subsidiaries, and affiliates, or its respective agents, members, associates, officers, directors, employees, interns, representatives, or any other person.

24. Entire Agreement/Reservation of Rights

Except for any Contract you enter into with the COMPANY which covers the products you purchase from the COMPANY, these Terms and Conditions and the COMPANY's Privacy Policy (which is/are hereby incorporated as if set forth fully in these Terms and Conditions) represent the entire agreement between You and the COMPANY with respect to Your use of this Site and the material available on or through this Site, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between You and the COMPANY with respect to this Site and the material available on or through this Site. Any rights not expressly granted herein are reserved.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES