



FABRIC FLARE SOLUTIONS LIMITED – TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In these Terms and Conditions:-

“the Company” means Fabric Flare Solutions Limited or Fabric Flare;

“Condition” means a term, condition or clause of these Conditions;

“Conditions” means the Company’s standard conditions of sale set out in this document (which supersede any earlier set of terms and conditions appearing in the Company’s sales literature or elsewhere) together with any other special terms or conditions specified in the Quotation or otherwise.;

“the Contract” means the Order and the Company’s acceptance thereof, together with the Terms and Conditions;

“the Customer” means the person or company specified on the Company’s Order Acknowledgement or Quotation whose Order is accepted by the Company;

“the Goods” means the materials, fabrics, wood products and/or other items which may be part of the Contract and upon which the Services are to be conducted and shall include any part of them;

“the Order” means the written order placed by the Customer placed on the Company or any verbal quotation or tender which is subsequently confirmed in writing;

“the Order Acknowledgement” means the Confirmation of Order or the form issued by the Company on receipt of the Customer’s Order – setting out the Contract and the Services;

“the Services” means the services described in the Order to be performed by the Company;

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. OFFER AND ACCEPTANCE

2.1 The Company shall supply and the Customer shall receive the Services in accordance with any Order Acknowledgement issued by the Company, or any Order which is accepted by the Company in writing subject to any variation set out in such acceptance, subject in either case to these Conditions.

2.2 All Quotations made, Order Acknowledgements issued, and all Orders are accepted, subject to these Conditions. These Conditions override any other terms, conditions or warranties which the Customer may subsequently seek to impose.

2.3 No variation or supplement to the Conditions shall be binding on the Company unless expressly accepted by the Company in writing.

2.4 No Contract shall come into existence until the Customer’s Order has been accepted in writing by the Company by means of an Order Acknowledgement.

2.5 Quotations shall be available for acceptance for a maximum period of 60 days from the date when given (or such longer period as the Company specifically agrees in writing) and may be withdrawn by the Company within such time period at any time by written or oral notice.

2.6 If any statement or representation has been made by the Customer by the Company or its servants or agents upon which the Customer relies, other than in the documents enclosed with the Quotation or Order Acknowledgement, then the Customer must set out that statement or representation in a document to be attached or endorsed on the Order any in any such case the Company may confirm, reject or clarify the point and submit a new Quotation.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, Price Guide, Order Acknowledgment, invoice, letter or other document issued by the Company shall be subject to correction without any liability on the part of the Company.

2.8 The Company shall be at liberty to withdraw from any negotiations or otherwise until such time as the Contract shall become binding without being under any liability whatsoever to the Customer.

2.9 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods is followed or acted upon entirely at the Customer’s own risk, and accordingly the Company shall not be liable for any such advice or recommendation.

3. ORDER AND SPECIFICATIONS

3.1 No Order submitted by the Customer shall be deemed to be accepted by the Company unless and until an Order Acknowledgement is issued by the Company.

3.2 The Customer shall be responsible for ensuring the accuracy of the terms of the Order and shall give the Company any necessary information to enable the Company to proceed with the Contract. Any failure to do so will allow the Company to charge the Customer an additional price for any delay or to terminate the Contract immediately.

3.3 The Customer shall indemnify the Company and its sub-contractors against all claims, damages, costs, penalties and expenses incurred by the Company or its sub-contractors to which the Company may become liable if any work done in accordance with the Customer’s specifications or requirements involves an infringement of a registered design, trademark, patent or other intellectual property right.

3.4 No Order which has been accepted by the Company (and confirmed as such in an Order Acknowledgement) may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer shall indemnify the Company in full against any loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.



- 3.5 All services are confidential to the Customer and any certificate issued by the Company shall not be issued or reproduced by the Customer (in whole or part) to any third party without the Company's written authorisation.
- 3.6 If a Customer wishes to copy any certificate produced by the Company as part of the Services, it must obtain written permission from the Company. The Company shall be entitled to withhold its consent in its absolute discretion. Subject as aforesaid only complete certificates may be copied and passed to third parties and no omissions or additions are allowed. Results and/or any comments supplied in certificates shall not be used in advertising or promotional literature without the Company's express permission.
- 3.7 The Customer shall and must inform the Company at the outset if the Services are known to be required for the purpose of litigation. If the presence of the Company's staff will be required at a court or other judicial or quasi-judicial hearing, or any certificate or sales literature required as evidence in a dispute, ample advance notification is required in order to provide for discussion between expert witness and legal representatives and/or for consideration of all relevant documentation. The Company must be shown full particulars of any claim which is pursued or defended.
4. **CERTIFICATION**
- 4.1 The Company shall decide, at its absolute discretion, whether a certificate is to be produced.
- 4.2 Any opinion, interpretation, or comments in any certificate issued by the Company is derived from the results of an in-house assessment carried out by the Company on representative samples taken from the Goods, or supplied by the Customer or sourced, on behalf of the Customer, by the Company.
- 4.3 Any opinion, interpretation, or comment in any certificate issued by the Company is outside the scope of UKAS accreditation.
- 4.4 The Company shall decide, at its absolute discretion, whether any certificate produced needs to be re-issued.
- 4.5 Save as specifically and expressly set out in any certificate issued by the Company, the Company gives no warranty that the Goods will be of satisfactory or merchantable quality and/or reasonably fit for purpose.
- 4.6 The relevance and validity of any certificate produced by the Company should be considered by the Customer for renewal after the period specified in the certificate.
5. **PRICE**
- 5.1 The price for the Services shall be the price quoted in the Quotation or in the absence of any price being quoted, on the Company's current Price Guide ruling at the time the Order was made.
- 5.2 All prices are exclusive of value added tax and similar taxes, levies, courier charges and duties, which the Customer shall be additionally liable to pay to the Company.
- 5.3 The Company reserves the right by giving notice to the Customer, at any time before completion of the Services, to increase the price of the Services to reflect any increase in the cost to the Company in executing the Contract due to any factor beyond the reasonable control of the Company (such as, without limitation, any increase in the cost of labour, raw materials, overheads or currency), any change in completion dates, quantities, or specifications for the Goods arising as a result of any error or omission or changes deemed necessary by the Customer, or any delay or interpretation in the Contract not attributable to the Company.
6. **TERMS OF PAYMENT**
- 6.1 For a Customer with a non-credit account, the Company will issue a pro forma invoice and payment of the total sum will be required before an Order is accepted.
- 6.2 For a Customer with a credit account, the Company will issue an invoice on completion of the Services and payment of the total sum will be payable 30 days from the date of the invoice.
- 6.3 The Company reserves the right, in its discretion, to request payment in part or in full for the Services prior to the work being carried out and reserves the right to withhold any certificate until such payment is received.
- 6.4 The time of payment of the invoice shall be the essence of the Contract.
- 6.5 No right of set-off shall exist in respect of any claims by the Customer against the Company unless and until such claims are accepted in full by the Company in writing and the Customer shall not withhold all or any part of any sum which has become due for payment under the Contract.
- 6.6 If the Customer fails to make any payment due to the Company (whether under the Contract or otherwise) on the due date then without prejudice to any other right or remedy available to the Company, the Company reserves the right to:-
- 6.6.1 cancel the Contract so far as any Services remain to be performed under it; and
 - 6.6.2 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 % per annum, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6.7 Any credit account shall be subject to the Company being satisfied as to the Customer's credit worthiness and, without prejudice to the generality of the foregoing, the Company may in its absolute discretion, having informed the Customer that the Goods are ready for despatch or collection, hold the Goods until such times as monies due in respect of the Goods and any other outstanding monies are paid in full.
- 6.8 Until payment is made in full, the Company will retain legal ownership of the processed Goods and the Company shall be entitled at any time to require the Customer to deliver the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.



7. COMPLETION

- 7.1 The Services will be completed at the time of despatch or collection of the Goods, or completion of any work carried out by the Company on site.
- 7.2 Unless otherwise specifically agreed in writing, the Company shall be obliged only to complete work within a reasonable time having regard to its work load at the time.
- 7.3 Time of completion of the Contract shall not be the essence, and the Customer shall not be able to cancel the Contract on account of any delay howsoever caused.
- 7.4 Where the Company is unable to carry out the Services due to circumstances beyond its reasonable control and it gives notice to the Customer informing it of the relevant circumstances, its obligation to complete the work within a reasonable time shall be suspended while those circumstances subsist.
- 7.5 On receipt of a notice under Condition 7.4, the Customer may cancel its instructions by written notice to the Company and neither party shall then be under liability to the other.

8. GOODS

- 8.1 The Company cannot guarantee that Goods will be measured prior to processing. It is the Customer's responsibility to ensure the accuracy of the delivered Goods prior to submitting the Goods to the Company.
- 8.2 All Goods are handled, treated and processed by the Company on condition that the Company will not be liable for any fault or defect, whether apparent or not, in the quality, condition or description of the Goods. It is the Customer's absolute responsibility to determine the condition and suitability of the Goods for the purpose intended.
- 8.3 The Company shall not be liable for inherent faults or the effect of pre-treatments by others which may only become apparent during or after processing, whether or not control sample tests have been carried out by the Company.
- 8.4 The Company will make every effort to limit any variation of the Goods, in respect of colour, shade, glaze, finish, durability or handle, but the company will not be responsible where such instances are considered to be within commercially accepted tolerances or are essential for the Goods to attain a particular specification in terms of flame retardancy.

9. ASSESSMENTS AND SAMPLES

- 9.1 The Company will take control samples from all Goods delivered, for the purpose of 'before' and 'after' indicative testing in-house.
- 9.2 If samples cannot be cut from the Goods, then representative samples should be supplied by the Customer. Any certification issued by the Company relating to such Goods will reference the samples having been supplied.
- 9.3 If samples cannot be cut from the Goods and representative samples are not supplied by the customer, then it may be necessary for the Company to source representative samples on behalf of the Customer. Any certification issued by the Company relating to such Goods will reference the samples having been sourced. In such cases, the Company reserves the right to charge for the resulting service.
- 9.4 All samples are retained under the Customer's name for future reference – for a minimum period of three years.
- 9.5 The Company shall not be liable for any reduction in quantity resulting from sampling and processing.
- 9.6 The Company reserves the right to submit random samples taken from Goods processed on behalf of the Customer and submit them to independent testing laboratories for verification of compliance. All costs relating to such assessment programmes will be met by the Company, as they form part of the Company's Quality Assurance procedure.
- 9.7 The Company may recommend samples are taken from Goods due to be processed on behalf of the Customer and submitted for independent testing of compliance, prior to full-scale production, in support of any certificate to be produced by the Company. In such instances the customer will be consulted and will be expected to pay all costs. The Company reserves the right not to issue a certificate for treatments applied to particular Goods if the Customer has declined a recommendation for additional tests.
- 9.8 The Company reserves the right to commission an associated company to carry out assessments of treated product.
- 9.9 The Company will only discuss test results relating to assessments carried out, or sponsored by, the Company. The Company reserves the right whether to comment or discuss any test results relating to assessments carried out by the Customer or a third party.
- 9.10 The Customer will accept any processed samples supplied by the Company as solely for reference and the Customer shall be deemed to have satisfied themselves as to all such matters prior to placing an Order to have related Goods processed.

10. RISK

- 10.1 The risk of damage to or loss of the Goods shall only pass to the Company, in the case of Goods to be delivered at the Company's premises, at the time when the Goods are unloaded safely and are in the Company's possession and control.
- 10.2 Risk shall pass to the Customer once the Customer, third party or carrier has collected the relevant Goods from the Company, at which time the Company shall no longer be responsible for the insurance or storage thereof.
- 10.3 Without prejudice to any other right of disposal the Company may have under these Conditions, the Company shall have the right to destroy any documents or test results after six months have expired from the completion of the Services save where the Services are for legal cases whereby the Company shall have the right to destroy any documents and test results after three years.
- 10.4 When Goods have not been collected by the Customer following a written request to do so from the Company, the Company shall be entitled to render a reasonable charge to the customer for the cost of storing the Goods.



11. DELIVERY

- 11.1 The Company in its absolute discretion can decide to transport Goods via an independent carrier. In such instances, delivery takes place upon the carrier's collection of Goods from the Company.
- 11.2 The Company undertakes to use reasonable endeavours to despatch Goods promptly and to keep to any agreed delivery date, but does not guarantee to do so. Time of delivery shall not be the essence of the Contract.
- 11.3 For all deliveries, transit insurance cover is limited per consignment by the individual carrier's terms and conditions. Additional transit insurance cover will only be arranged at the Customer's request.
- 11.4 Standard and additional transit insurance cover can only be claimed if Goods are lost or damaged and not if delivered late. If Goods are lost, damaged, delayed or delivered incorrectly – the Company will not be liable for any loss or use, loss of profit or other direct or indirect loss the Customer may suffer. Any insurance payable from the carrier will not include any consequential losses.
- 11.5 The Customer shall be responsible for arranging any insurance cover and paying any premiums to afford protection in respect of loss or damage which it may suffer as a result of any breach, failure or negligence upon the part of a carrier.

12. LIMITATION OF LIABILITY

- 12.1 Where the Goods are delivered to the Company for the Services ordered and such Goods are, under the Contract, returnable to the Customer, then if the Company is unable for any reason to return the Goods to the Customer, the Company's liability in respect of missing Goods shall not exceed the replacement cost of the goods of the same description, if available in the United Kingdom, or if they are not available there, their cost to the Customer.
- 12.2 Where the Customer supplies inconsistent instructions on any matter relating to the Services, the Company shall not be liable for any loss, damage, error or mistake which results from following any of those instructions in good faith.
- 12.3 Subject to Conditions 3.5 and 3.6, the Company shall not be liable to any third parties who rely on the information given in any certificate as part of the Services.
- 12.4 Certificates are based on the methods of treatment employed only, and the Company shall not be liable to the Customer for any implied or assumed compliance concerned with the end use of the treated goods.
- 12.5 Subject to Condition 10.1 in no circumstances shall the Company be liable to the Customer, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof:
- 12.5.1 for any increased costs or expenses;
 - 12.5.2 for any loss of profit, business, contracts, revenues or anticipated savings; or
 - 12.5.3 for any special indirect or consequential damage of any nature whatsoever arising directly or indirectly out of the provision of the Services or of any error or defect therein, or of the performance, non-performance or delayed performance of the Company.
- 12.6 The Customer agrees with the Company that if the Customer shall suffer loss or damage as a result of any breach of any terms of the Contract by the Company or its servants or agents or as a result of the negligence of the Company or its servants or agents then the liability of the Company in respect of such loss or damage (taking into account Conditions 12.1 and 12.5) shall be limited to the lower of the following:-
- 12.6.1 the actual amount of any loss or damage suffered by the Customer; or
 - 12.6.2 a sum which is equal to 10 times the price of the Services charged to the Customer.
- 12.7 The limitation of the liability of the Company as referred to in Condition 12.6 shall subsist indefinitely notwithstanding the termination or completion of the Contract.
- 12.8 The Customer shall be responsible for arranging any insurance cover and paying any premiums to afford protection in respect of loss or damage which it may suffer as a result of any breach, failure or negligence upon the part of the Company or its servants or agents as referred to in Condition 12.6.
- 12.9 The limitation of liability contained in Condition 12.6 shall extend and apply not only to the Company but also to its servants and duly authorised agents.
- 12.10 The limitation of liability contained in Condition 12.6 shall not apply to any liability of the Company for any death or personal injury arising as a result of the negligence of the Company, as defined by Section 1.1 of the Unfair Contract Terms Act 1977.
- 13. ACCEPTANCE OF LIMITATION OF LIABILITY BY THE CUSTOMER**
- 13.1 The Customer agrees and accepts that, with regard to the limitation of liability contained in the preceding Condition; such limitation of liability is perfectly fair and reasonable having regard, inter alia, to the following circumstances:
- 13.1.1 The potential losses which could or might be caused as a result of any breach or negligence as referred to in Condition 12 are greatly in excess and wholly disproportionate to the amount which is being charged by the Company to the Customer in respect of the provision by the Company of the various Services referred to in the Contract.
 - 13.1.2 That the Company endeavours to keep its charges in respect of the Services provided by it to as low a level as reasonably possible, for the benefit of the Customer and all the Company's other customers.
 - 13.1.3 That, while the Company and the Customer regard the level of insurance cover held by the Company as being adequate and reasonable the cost of additional insurance cover would be disproportionately expensive given the nature of the Services and the price being paid by the Customer.



- 13.2 The Customer confirms that:-
- 13.2.1 It has read and fully understands the terms of both Conditions 12 and 13;
 - 13.2.2 It has been offered the opportunity to pay a higher charge for the Services in return for the Company accepting a higher level of liability but has declined to do so;
 - 13.2.3 It accepts the limitation of liability in Condition 12 on this basis.
14. **INDEMNITY**
- 14.1 The Customer undertakes to indemnify the Company against all claims relating to or arising from the Services supplied to the Customer by the Company in respect of any loss, damage or expense sustained by any third party howsoever caused save for death or personal injury caused in whole or in part by the Company's negligence.
15. **DEFAULT OR INSOLVENCY OF CUSTOMER**
- 15.1 Condition 15 applies if the Customer defaults in any of its commitments with the Company; or
- 15.1.1 The Customer makes any voluntary arrangement with his creditors or becomes subject to an administration order or becomes bankrupt, or (being a company) goes into liquidation (other than for the purposes of amalgamation or reconstruction); or
 - 15.1.2 an encumbrance takes possession, or a receiver is appointed, of any property and assets of the Customer; or
 - 15.1.3 The Customer ceases, or threatens to cease, to carry on business; or
 - 15.1.4 The Company reasonably apprehends that any of the events mentioned above are about to occur in relation to the Customer and notifies the Customer accordingly.
- 15.2 If Condition 13 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any uncompleted Contract forthwith and to withdraw any certificates that have been issued.
- 15.3 In the event of an occurrence as outlined in Condition 15.1, then the Customer shall indemnify the Company against all loss including loss of profit, costs (including the costs of labour and materials used and overheads incurred) and all other expenses and damages connected with the Contract and its cancellation.
- 15.4 If the Customer shall become aware that any of the circumstances mentioned in Condition 15.1 has or is likely to occur, then the Customer shall inform the Company of the occurrence or likely occurrence of such event immediately.
- 15.5 The Customer shall indemnify the Company in respect of all legal administration and other costs and expenses resulting from any breach by the Customer of these Conditions, or the Contract or its lawful termination by the Company.
16. **END USE OF GOODS**
- 16.1 The end use and any further processing of the Goods by others are the absolute responsibility of the Customer. Goods subjected to further treatment or processing of any description, except only by the Company, shall not then be considered for any complaint in respect of fitness for purpose or any spoiling or subsequent deterioration.
17. **ADVICE AND INFORMATION**
- 17.1 Any technical advice, information or data provided by the Company, whether verbally, in writing, or by way of sample testing, is accepted by the Customer in good faith and without incurring any responsibility on the part of the Company. The Customer shall be deemed to have verified all such advice, information, data and treatment requirements, as may apply to any intended application or end use of the Goods.
18. **VARIATION**
- 18.1 Whilst every effort is made to limit any variation of the Goods, in respect of colour, shade, glaze or handle, the Company shall not be responsible where such variances are considered to be within commercially acceptable tolerances or are essential for the product to attain the relevant standard in respect of flame retardancy.
19. **CLAIMS**
- 19.1 Any claim by the Customer, which is based on defects in the quality or condition of the Goods, must be notified to the Company in writing within seven working days from the date of delivery to the agreed address or date of customer collection. If the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall hold no liability for such defect or failure and the Customer shall be bound to pay the price of the Goods.
- 19.2 The Company will not accept responsibility for damage or spoiling of Goods whether completely or in part, once the Goods have been cut, worked or installed. It is the Customer's absolute responsibility to examine the Goods before any work takes place.
- 19.3 The Customer must afford the Company (or its nominated servants or agents) the opportunity to fully inspect any Goods, which are, or may become, the subject of a claim before such Goods are otherwise handled, processed or dealt with.
- 19.4 The Company reserves the right to arrange collection, at the Company's cost, of any Goods, which are, or may become, the subject of any claim - for return and assessment at the Company's place of business - whether any related invoices have been paid by the Customer or not. The Customer agrees to afford the Company the opportunity to assess any treated Goods and conduct an inspection, utilising independent accredited testing bodies if the Company so decides.
- 19.5 If Goods have been cut, worked or installed then, at the Company's absolute discretion, it reserves the right to examine any such Goods either at the Company's place of business or at another location - whether any related invoices have been paid by the Customer or not. In such instances, the Customer will be responsible for any transportation, dismantling or related costs.



- 19.6 The Company will not be liable for any damage or deterioration of the Goods after delivery, whether the same occurs due to unsuitable storage, inappropriate use or any other causes whatsoever.
- 19.7 The Company reserves the right to instruct independent testing bodies to assess any Goods subject to any claim as well as reserving the right to pass any claim to a registered insurance body of the Company's choosing.
- 20. FORCE MAJEURE**
- 20.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of the Company's obligations in relation to the Contract if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-
- 20.1.1 act of God, explosion, flood, tempest, fire or accident;
 - 20.1.2 war of threat, sabotage, civil disturbance or requisition;
 - 20.1.3 import or export regulations or embargoes;
 - 20.1.4 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or a third party);
 - 20.1.5 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 20.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 20.1.7 power failure or breakdown in machinery;
 - 20.1.8 lack of co-operation by the Customer.
- 21. INTELLECTUAL PROPERTY**
- 21.1 All intellectual property including but not limited to copyright in any certificate or other written material produced by the Company shall belong to the Company and shall not, save as specifically agreed otherwise in writing, be reproduced or copied in whole or in part. Any certificate delivered to the Customer by the Company shall remain the property of the Company.
- 22. GENERAL**
- 22.1 Any notice or report required or permitted to be given by either party to the other under these Conditions or Services shall be in writing and addressed to that other party at its head office.
- 22.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered a waiver of any subsequent breach of the same or any other provision.
- 22.3 If any of the provisions of this Contract is held by any component authority to be invalid or unenforceable in whole or in part the validity of the other provisions in question shall not be affected thereby.
- 22.4 The Contract shall be governed by the laws of England and for the purposes of settlement of any disputes arising out of or in conjunction with these Conditions or the Contract that parties hereby irrevocably submit themselves to the exclusive jurisdiction of the English Courts. The Company can in its absolute discretion decide whether it enters into conversation or correspondence with any third party.
- 22.5 The breach of any Holding, Subsidiary, or Associated Company (as defined in Section 736 of the Companies Act 1985 as amended) of the Customer of any terms and conditions of any contract agreement or other arrangement with the Company shall be deemed to be a breach of the terms of the Contract and shall entitle the Company to take or refrain from taking all acts and remedies to which it is entitled under these Conditions as if such default had been a breach or default under the Contract.
- 22.6 No person who is not a party to the Contract shall be entitled to enforce any provision of the Contract and to that extent the Contract (Rights of Third Parties) Act 1999 shall not apply to any provision of the Contract.