

FIREPROOF SOLUTIONS, INC.
TERMS & CONDITIONS

Fireproof Solutions, Inc. (“Fireproof”) is the developer and supplier of non-intumescent fire protection coatings for old & new surfaces (“Product”). Below are the terms and conditions for the sale and use of Product. Please carefully read these Terms & Conditions (“Terms”), which contain important information about your relationship with Fireproof, including mandatory arbitration of disputes instead of class actions or jury trials, limitations on liability, disclaimers, and warranty information. You (“Customer”) will become bound by these provisions once you accept the Terms by doing any of the following:

- a) giving Fireproof a written confirmation, or telling Fireproof orally that Customer accepts.
 - b) submitting a signed Purchase Order to Fireproof.
 - c) ordering Product through Fireproof’s website.
 - d) using Product purchased from a third party.
- 1) **Orders:** Customer shall send a Purchase Order (“PO”) for each order of Product or purchase Product through Fireproof’s website “Web Order” (collectively with PO, an “Order”). All Orders must state the quantity of Product to be purchased. The quantity of Product purchased is solely Customer’s decision. All Orders must be in a form acceptable to Fireproof and must not contain any terms inconsistent with, contrary to, or in addition to the terms set forth herein. Fireproof may accept or reject any Order. If Fireproof accepts an Order, Fireproof will issue an invoice and Customer will provide payment for such order.
- 2) **Payments:**
- a) All sales are final, no returns or refunds.
 - b) All sales are prepaid.
 - c) Customer shall purchase Product at the price(s) set forth in the Order. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs, and taxes.
- 3) **Delivery/Shipping:**
- a) Product will be delivered within a reasonable time after the receipt of Customer’s payment, subject to the availability of Product. Fireproof shall not be liable for any delays in transit.
 - b) Unless otherwise agreed in writing by the parties, Fireproof shall deliver the Product to the location indicated on Customer’s Order (the “Delivery Point”) using Fireproof’s standard methods for packaging and shipping Product. Title and risk of loss shall pass to Customer upon delivery of Product to the Delivery Point. Customer shall be responsible for any shipping and loading costs and to provide equipment and labor reasonably suited for receipt of Product at the Delivery Point.

Fireproof intention is to ship the total order. However, if circumstances require, Fireproof may, in its sole discretion, without liability or penalty, make partial shipments of Product to Customer until order is complete.

FORCE MAJEURE: Fireproof shall not be liable for any delay in or failure to perform due to any event or contingency beyond its reasonable control (an event of “Force Majeure”), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Fireproof’s employees or the employees of others), raw material shortages and material increased in cost of raw materials, including those material increases in cost resulting from the imposition or tariffs. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Fireproof to perform. Fireproof may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products in such manner as Fireproof, in its sole judgement, deems fair and equitable.

- 4) **CONFIDENTIALITY:** Fireproof formulations and products are considered “trade secrets” and the intellectual property of Fireproof exclusively. Customer is prohibited from any attempt (or having any third-party attempt) to analyze or reverse engineer the Fireproof formulations. Any such action will be a breach of these terms and conditions. Fireproof will seek damages through any and all means available.
- 5) **Fire Safety:** For various reasons, including (i) the very different circumstances that may exist from one fire to another, (ii) the differences between conditions in an actual fire and laboratory conditions in which testing is conducted, and (iii) the inherent variability of fire tests, passing a laboratory test or certifying/labeling Product for use in specific assemblies/systems does not mean that the same application of Product will necessarily provide an equivalent protection or the same result in an actual fire or in a new laboratory test. Furthermore, Product is to be used only as a component of complete fire retardation systems. It will only contribute to slowing fire spread for the area where it has been applied and will not, by itself, prevent a fire from starting or continuing. The amount by which Product retards a particular fire will depend, among other things, on (i) the amount of Product applied, (ii) the conditions of the other elements of the assembly incorporating Product, and (iii) the conditions of the actual fire itself. Product will not make a fire any less dangerous to persons or property. Fireproof cannot guarantee that loss or injury will not be suffered by persons or property.
- 6) **Product Application:** It is the sole responsibility of Customer, whether Customer personally applies the Product or hires a qualified applicator to apply the Product, to ensure that the Product is applied in strict compliance with the instructions found on the Technical Data Sheet on the Product label (“Instructions”) and that the recommended thickness is applied. It is the responsibility of the Customer to maintain the coating in good condition.
- 7) **Indemnification:** Customer agrees to indemnify, defend, and hold harmless Fireproof from and against any and all claims, demands, lawsuits, and proceedings (“Claims”), and all judgments, losses, costs and expenses (including but not limited to attorneys fees) arising from or in connection with any Claims, with respect to damage or destruction of any property, or any death or injury of any person, alleging or based in whole or in part on any allegation of the failure of Product to prevent, retard, minimize, or in any way limit any fire. Customer will, at Customer’s expense, defend, with counsel acceptable to Fireproof, any Claim asserted against Fireproof. Customer will not settle any Claim (i) without first obtaining Fireproof’s written consent if such settlement would render Fireproof liable for the payment of any judgment, damages, compensation, or other amount, and (ii) without obtaining a general release of Fireproof.
- 8) **Inspections:** Because this is a safety issue, Fireproof recommends that all surfaces to which Product was applied be certified by customer in-house expert or inspected by a third party special inspection agency, an ICC-ES certified professional, to verify that Product has been properly applied in the required uniform thickness. The hiring of any independent inspector is

the responsibility of the Customer. Inspection fees are not included in the Product's price. Fireproof will not participate in the final inspection and will not be responsible for related fees.

Fireproof reserves the right to request a copy of any final inspection report made and in the event a claim is made under the Product Limited Warranty, Fireproof reserves the right to perform or cause to be performed an inspection report. The Product Limited Warranty shall be void if any inspection determines the Product was not applied properly.

9) Two (2) Year Limited Warranty: Fireproof provides a two (2) Year Limited Warranty from purchase of the Product. Please read the warranty below carefully as it contains important information.

For a period of two (2) years from purchase, Product will not crack, peel, or chip if properly applied to a properly prepared and approved surface and if properly maintained. If Product fails to meet the terms set forth above, Fireproof will provide, at no charge, a quantity of Product sufficient to repaint the surface affected.

THIS IS THE EXCLUSIVE REMEDY FOR ALL WARRANTY CLAIMS. THIS WARRANTY SPECIFICALLY EXCLUDES LABOR OR COSTS OF LABOR OR INCIDENTAL OR CONSEQUENTIAL DAMAGES ASSOCIATED WITH THE USE OF THIS PRODUCT.

In the event of a warranty claim, the claimant must notify Fireproof in writing of the defect promptly following discovery (within 10 days) and must submit (i) proof of purchase, including the date of purchase, (ii) proof that the Product was applied in strict compliance with Fireproof's Instructions for the Product, and that the recommended thickness was applied, and (iii) proof of the defect (including photos and sample of defective materials) and date of discovery. Fireproof reserves the right to inspect any painted surface to which the warranty claim applies.

This warranty will be void if, post application, the Product is (a) treated by any abrasive process or material, (b) exposed to any biological solvent or caustic chemical or agent, or (c) altered or repaired. The warranty will also be void if the Product is; (i) diluted or adulterated, (ii) mixed with any other product, including but not limited to paint, (iii) not stored or applied in strict compliance per Fireproof's Instructions for the Product, (iv) not applied in the required uniform thickness per Fireproof's specifications, (v) not inspected in accordance with Fireproof's Instructions, or (vi) used after two (2) years from the date of purchase.

If the Product is going to be exposed to exterior weathering, Customer must select the appropriate Product which is designed to withstand exterior weathering exposure. Product attributes, including exterior exposure, are described in Fireproof's Technical Data Sheets (available on the Fireproof website or by request). Failure to select the appropriate Product will void this warranty.

THIS WARRANTY IS MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES. FIREPROOF EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE.

10) Limitation of Liability:

- a) IN NO EVENT SHALL FIREPROOF BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER**

ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT FIREPROOF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- b) IN NO EVENT SHALL FIREPROOF'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO FIREPROOF FOR THE PRODUCT SOLD TO CUSTOMER IN THE PRECEDING TWELVE (12) MONTHS.
- 11) **Waiver:** The failure of Fireproof to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision.
- 12) **Amendment:** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of Customer and Fireproof.
- 13) **Severability:** In the event that any part or portion of these Terms is deemed to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect.
- 14) **Governing Law:** These Terms shall be governed by the laws of the State of Ohio.
- 15) **Compliance with the Law:** Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that Customer needs to use the Product.
- 16) **Binding Arbitration and Class Actions:**
- a) CUSTOMER AND FIREPROOF ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT CUSTOMER WOULD HAVE IF CUSTOMER WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.
- b) ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND FIREPROOF ARISING FROM OR RELATING IN ANY WAY TO CUSTOMER'S PURCHASE OR USE OF THE PRODUCT, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.
- c) CUSTOMER AND FIREPROOF CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN ARBITRATION OR SMALL CLAIMS COURT IN THE STATE OF OHIO AND COUNTY OF MONTGOMERY FOR

ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THESE TERMS.

- d) The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by this Section 15. (The AAA Rules are available at www.adr.org/Rules or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section.
- e) The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction.
- f) Customer may elect to pursue Customer’s claim in small-claims court rather than arbitration if Customer provides Fireproof with written notice of Customer’s intention to do so within 60 days of Customer’s purchase of the Products. The arbitration or small-claims court proceeding will be limited solely to Customer’s individual dispute or controversy.
- g) Customer agrees to an arbitration on an individual basis. In any dispute, **NEITHER CUSTOMER NOR FIREPROOF WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.** The arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.
- h) If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.