



Industrial Textile Repair Services Inc.

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Terms and Conditions for Service of Customer Owned Goods

(A) Scope.

1. FABFIX Industrial Textile Repair Services Inc. ("Fabfix") is an independent contractor for the provision of services ("Services") for customer owned goods ("Goods"). The Terms and Conditions for Service of Customer Owned Goods ("Terms and Conditions") contained herein apply to the Services provided by Fabfix. These Terms and Conditions shall apply to all estimates, quotations and sales made by Fabfix except to the extent these Terms and Conditions conflict with a Sales Agreement currently enforceable between Fabfix and customer.

(B) Acceptance.

2. Customer, by accepting the Goods, making any payments or ordering any Services having previously received these Terms and Conditions, will be deemed to be bound by these Terms and Conditions covering the Services of such Goods ordered, notwithstanding any Terms and Conditions contained in any prior or later communication from customer and whether or not Fabfix will specifically or expressly object to any of customer's Terms and Conditions.

(C) Quotations; Orders; Acceptance of Orders.

3. Customer may submit to Fabfix all requests for Services in writing ("Request for Quote"). Phone orders are acceptable however, written orders are preferred. A Request for Quote must contain a clearly defined photographic image of the section(s) of Goods deemed to be in need of repair accompanied by a detailed description of such Goods and such section(s) of Goods deemed to be in need of repair. In response to a Request for Quote, Fabfix may issue to customer a written quote for Services to be rendered ("Quotation"). To order such Services from Fabfix, customer must submit a written purchase order (an "Order").
4. In the event that additional services in excess of Quotation are deemed necessary upon the physical inspection and evaluation of the section(s) of Goods deemed to be in need of repair by Fabfix, Fabfix must obtain written authorization from customer. In the event customer approves these additional service charges Fabfix will provide customer a revised Quotation for Services to be rendered. Customer must then submit written consent including the additional Services to be rendered prior to Fabfix performing any work.
5. In the event customer does not authorize additional service charges customer nullifies any right to Fabfix's Limited Warranty and Fabfix has no further obligation to complete Services other than work performed according to the initial Quotation, and customer is obligated to pay for all work and materials according to the initial Quotation.
6. Customer may submit an Order without first submitting a Request for Quote. In response to such an Order, Fabfix will require a non-refundable evaluation fee for the inspection and evaluation of customer's Goods prior to customer shipping Goods to Fabfix.
7. Once the physical inspection and evaluation of the section(s) of Goods deemed to be in need of repair is completed by Fabfix, Fabfix will provide customer a Quotation for Services to be rendered.
8. In the event customer approves said Quotation, customer must submit written consent describing the Services to be rendered in said Quotation prior to Fabfix performing any work. The evaluation fee will then be applied towards actual service charges.
9. An Order shall be deemed accepted and binding on Fabfix without further action if: **(i)** it is received in response to a Quotation within five (5) business days of the date of Quotation and **(ii)** it contains no alteration of any term or condition stated in the Quotation.



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10. Notwithstanding any acceptance (deemed or otherwise) of an Order, Fabfix may alter the Terms and Conditions of any Order at any time if customer's creditworthiness fails to meet Fabfix's requirements.
11. Customer understands and agrees that all Terms and Conditions stated in a Quotation are material for this purpose. Oral or written statements made by Fabfix or its representatives or agents which conflict with or add Terms and Conditions to an Order shall not constitute a part of an Order unless confirmed in writing by Fabfix. An Order which does not meet the above requirements shall only be deemed accepted and binding on Fabfix if Fabfix issues a new Quotation stating the Terms and Conditions of the Order and customer delivers to Fabfix an Order meeting the above requirements.
12. No Order may be cancelled, rescheduled or reconfigured without Fabfix's prior written authorization and in such event customer will be liable to Fabfix for any related additional costs and expenses incurred by Fabfix.

(D) Pricing.

13. Customer agrees that prices specified by Fabfix are acceptable and are presumed to be fair and reasonable.
14. The prices and charges stated on the face hereof shall be adjusted to and the Services and other items covered by this order shall be invoiced at the prices and charges fixed by Fabfix at the time of and for each shipment under this Order.
15. All Quotations to service Goods are subject to additional charges as they are determined. Final charges for Services are based on actual time and materials.

(E) Terms and Conditions of Payment.

16. Payment for all shipments hereunder shall be made by customer against Fabfix's invoice within thirty (30) days from the date of invoice.
17. Any invoice that remains unpaid after the due date is considered delinquent. Customer will therefore be in default if it fails to pay any sum due to Fabfix within payment Terms and Conditions granted, or fails to timely perform any other obligation owing to Fabfix, or if any bankruptcy or similar proceedings under federal, provincial, state or jurisdictional law are filed by or against customer. Upon the occurrence of any default, Fabfix will recover from customer all amounts payable hereunder.
18. Customer agrees and understands that customer is responsible for all costs and expenses incurred by Fabfix in collecting any sums owing by customer, which may include but are not limited to, collection agency, reasonable attorneys' fees and costs of the suit.
19. Payments on open account shall be applied first to current balances, then to balances overdue. Prices are conditioned upon timely payment. Balances thirty (30) days or more will accrue one and one-half percent (1 ½%) interest for each month or portion thereof such balance remains due, or what the current law permits.
20. Non-payment or delinquent payment annuls any and all warranties.
21. All rights and remedies of Fabfix, on default are cumulative and may be exercised simultaneously or successively. No waiver of any one default will waive any other or subsequent default.

(F) Taxes.

22. Fabfix's price does not include any tax or other charge now or hereafter imposed by law or regulation, domestic or foreign, upon any Services herein sold or on the production, manufacture, transportation, disposal or delivery thereof. Accordingly, in addition to the price specified herein, the amount of any such tax or other charge applicable to this transaction herein shall be paid by customer. At its option, Fabfix may initially pay any such tax or other charges for customer's account and thereafter invoice customer for same.



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(G) Evaluation Fees.

23. Evaluation fees are required by Fabfix to inspect Goods and evaluate the cost of Services that may be required for such Goods.
24. Evaluation fees must be agreed to in writing and paid in full prior to customer shipping Goods to Fabfix.
25. Evaluation fees are non-refundable and can only be applied towards service charges for Goods the evaluation fee was intended for.
26. The minimum evaluation fee is \$650.00 Canadian dollars.

(H) Freight and Shipping.

27. It is customer's obligation to notify Fabfix when Goods are being shipped to Fabfix.
28. All Goods are shipped to and from Fabfix's facility at customer's expense. Risk of loss passes to customer upon placement of Goods with a carrier.
29. If the customer wishes, they may provide their own carrier for return shipping. Fabfix will notify the customer when the Goods are ready for return shipping.
30. All shipping arrangements must be designated and shipped freight collect by customer unless otherwise agreed to in writing.
31. Any request other than freight collect on customer account is subject to the standard freight rate of the carrier. Freight charges may be constructed on the basis of standard carrier tariffs and may not reflect actual transportation costs.
32. Customer will pay for daily storage charges of \$150.00 per business day if Fabfix holds Goods at customer's request pending instructions or rescheduled delivery for more than five (5) business days.
33. Customer assumes full responsibility for compliance with all provincial, federal, and local regulations and ordinances.

(I) Insuring Goods.

34. It is customer's decision whether to insure shipments for full, new replacement value.
35. In the event insurance is not obtained it will be assumed that customer wishes to self-insure.
36. It is customer's responsibility to file damage claims with courier.
37. Fabfix carries \$2,000,000 Commercial Liability Insurance to insure the contents of its facility, which includes customer owned goods.

(J) Reporting Discrepancies upon Receipt of Goods.

38. Upon receipt of Goods, it is customer's obligation to immediately inspect Goods to confirm Goods received are; (i) as stated on packing list (ii) received with all items sent to Fabfix (iii) serviced according to agreement in writing. **FABFIX ALLOWS SEVENTY-TWO (72) HOURS FROM RECEIPT OF GOODS TO REPORT ANY DISCREPANCIES WITH PACKAGING LIST, OR MISSING ITEMS. FAILURE TO COMPLY WITH THIS OBLIGATION CONSTITUTES CUSTOMER'S ACCEPTANCE OF GOODS IN FULL, FORFEITURE OF RIGHT TO REFUTE PAYMENT TO FABFIX, AND FORFEITURE OF ANY CLAIMS AGAINST FABFIX.**

DISSATISFACTION WITH SERVICES PERFORMED IS SUBJECT TO THE TERMS AND CONDITIONS IN SECTION (K) LIMITED WARRANTY FOR SERVICES PERFORMED ON CUSTOMER OWNED GOODS, BELOW.



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(K) Limited Warranty for Services Performed on Customer Owned Goods.

39. The foregoing warranty is limited to only those parts repaired or replaced and does not cover and expressly excludes any claim, damage, loss or expense arising out of or relating to: (i) accident or vandalism; (ii) abuse, misuse or unapproved use of the Goods; (iii) installation practices; (iv) abnormal conditions of use; (v) improper maintenance or failure to maintain; (vi) improper storage, handling or shipment; (vii) design, installation or construction deficiencies of any kind or nature of such Goods.
40. The foregoing warranty is limited to only those Goods having at least 70% of their economical working life remaining under normal working conditions and the agreement by Customer that exact original manufacturer's specifications are not attainable.
41. Fabfix warrants that Services performed by it shall be performed in accordance with the Terms and Conditions of the applicable accepted and binding Order, and that areas deemed in need of repair as per the Order will be free of defects in workmanship following repair, unless otherwise agreed to in writing.
42. Fabfix's warranty for Services is valid only for a period of thirty (30) days from date of installation or for a period of one hundred and sixty (160) days from the date of shipment, whichever is shorter.
43. Customer must give Fabfix notice of any non-conformance within three (3) business days after customer discovers or should have discovered such non-conformance. The failure of customer to so notify Fabfix of a claim that Services did not comply with this warranty shall constitute an irrevocable waiver of this claim.
44. The sole obligation of Fabfix under the foregoing warranty will be to repair the section(s) of Goods previously repaired under the Order that fail to meet said warranty and such obligation will constitute the sole and exclusive remedy of customer.
45. Fabfix is only responsible for associated costs to remedy any Goods failure that is not due to customer abuse, negligence, or operator error. These costs are limited to Goods repair and transportation to and from customer location via non-priority shipping method.
46. All shipping costs must be prepaid by customer, and are reimbursable to customer upon absolving customer abuse, operator error, and or negligence.
47. In the event customer notifies Fabfix regarding dissatisfaction with Services performed within the time allowed, and decides to return Goods, customer must obtain a Return Material Authorization Number issued by Fabfix, and follow the guidelines within the Return Material Authorization Terms and Conditions.
48. If customer returns any Goods without authorization from Fabfix, such Goods will be held by Fabfix awaiting customer's instructions for 20 business days, after which Fabfix may deem the Goods abandoned and dispose of them as it sees fit, without crediting customer's account.
49. In the event customer returns Goods, customer is not relieved of any obligation or liability until Fabfix evaluates Goods and/or validates customer's claim(s).
50. If upon inspection of failed Goods there is evidence of customer abuse, negligence or operator error, the customer is liable for all transportation costs, evaluation fees, and all repair charges.
51. **FABFIX IS NOT THE MANUFACTURER OF ANY GOODS. THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY FABFIX WITH RESPECT TO THIS SERVICE. ALL OTHER REPRESENTATIONS AND WARRANTIES EXPRESSED OR IMPLIED ARE EXPRESSLY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR CLAIMED TO ARISE FROM COURSE OF DEALING OR USAGE AND TRADE PRACTICE.**

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(L) Limitation of Liability.

52. Customer understands and agrees that in no event shall Fabfix, its affiliates and any of their respective directors, officers, employees, agents or other representatives be liable for any direct, indirect, incidental, consequential, special, exemplary, punitive or aggravated damages (including without limitation damages for loss of wages, income or profit, savings, goodwill, loss of or damage to property, third party claims or other intangible losses) or any other damages of any kind in connection with or arising from any action or omission of Fabfix relating in any way to the Services provided or to these Terms and Conditions for Services of Goods, regardless of whether or not Fabfix had been advised of or could have foreseen the possibility of such damages
53. Customer expressly acknowledges that Fabfix will enter into a service agreement and these Terms and Conditions with customer and Fabfix will make services available to customer in reliance upon the limitations and exclusions of liability and the disclaimers set forth herein, and that the same will form an essential basis of the bargain between customer and Fabfix. Customer expressly agrees that the indemnities, limitations, exclusions of liability and the disclaimers set forth herein will survive, and continue to apply in the case of a fundamental breach or breaches, the failure of essential purpose of contract, the failure of any exclusive remedy or the termination of Customer's service agreement or these Terms and Conditions.
54. Fabfix's entire liability, regardless of the form or nature of the action, shall in no event exceed the purchase price paid by customer to Fabfix under the applicable Order.

(M) Indemnification.

55. Customer agrees to defend, indemnify and hold harmless Fabfix to each of its respective directors, officers employees, and agents from all responsibility third parties for personal injury and property damage, including incidental, consequential, special, or other indirect damages and lost profits, relating in any way to the Services provided by Fabfix. Customer shall defend at its sole expense any action brought against Fabfix as a result of any personal injury or property damage. Customer further agrees to indemnify Fabfix for all costs (including attorneys' fees) incurred by Fabfix in defending any such claims or in establishing its rights to indemnification.

(M) Force Majeure.

56. Fabfix will not be responsible for any delays or failure, nor liable for any loss or damages resulting from such delays in providing Services due to unavailability of: (i) parts or labour, strikes, fires, floods, delays in transportation or lack of transportation facilities, restrictions imposed by Federal, Provincial, State or jurisdictional legislation or rules or regulations, or (ii) any other cause beyond Fabfix's control.

(N) Repairer's Lien.

57. Customer hereby grants Fabfix a repairer's lien on any and all Goods that Fabfix has inspected, evaluated and or repaired, that customer has not paid for according to the Terms and Conditions agreed to between Fabfix and customer.

(O) Order of Precedence; Waivers.

58. In the event of a conflict between Terms and Conditions and conditions stated in any order or other procurement documents issued by customer, and any acknowledgment or other document provided by Fabfix, the latter shall prevail; and in the event of a conflict between any of the foregoing documents and these Terms and Conditions, these Terms and Conditions shall prevail.
59. No waiver of any rights, obligations or defaults with respect to these Terms and Conditions or any Order shall be effective unless in writing and signed by the party against which the same is sought to be enforced.

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60. One or more waivers of any rights, obligations, or defaults shall not be construed as a waiver of any subsequent right, obligation, or default. No delay or failure of either party in exercising any right and no partial or single exercise thereof shall be deemed to constitute a waiver of that right or any other rights.

(P) Relationship of the Parties; Assignment.

61. Fabfix is not an agent or partner of customer. Customer has no authority to act on behalf of Fabfix or to bind Fabfix with respect to any promise or representation unless specifically authorized in writing to do so by Fabfix. Customer may not, without Fabfix's prior written consent, assign or transfer any Order, or any of its rights or obligations under these Terms and Conditions or any Order, to any other party.
62. Fabfix may delegate its obligations to its affiliates, agents, suppliers and contractors, and Fabfix may disclose to any such persons any information required by them to perform the duties so delegated to them, but such delegation shall not relieve Fabfix of its obligations under these Terms and Conditions or the applicable Order.

(Q) Governing Law and Consent to Jurisdiction.

63. These Terms and Conditions and any Order and all rights and duties of Fabfix and customer arising herein shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada without reference to its conflict-of-law rules. Subject to Section (R) (Dispute Resolution) below, each party hereby agrees to submit to the jurisdiction of the courts of the Province of Ontario and to waive any objections based upon venue.

(R) Dispute Resolution.

64. Customer and Fabfix agree that except where prohibited by applicable law, any controversy, claim or dispute arising out of or relating to these Terms and Conditions, customer's service agreement or the relationship which results from these Terms and Conditions, including without limitation, the performance, breach, enforcement, existence or validity of the matters provided for in these Terms and Conditions or your receipt of the Services provided, which cannot be amicably resolved, even if only one of the parties declares that there is a difference (collectively, a "Claim"), will be referred to and finally settled (to the exclusion of the courts) by private and confidential binding arbitration before a single arbitrator held in Ottawa, Ontario in English and governed by Ontario law pursuant to the Arbitration Act, 1991 (Ontario), as amended, replaced or re-enacted from time to time. The arbitrator will be a person who is legally trained and who has experience in the industrial textile field in Canada and is independent of either party. Any such Claim will be arbitrated on an individual basis, and will not be consolidated in any arbitration with any claim, controversy or dispute of any other party. Except where prohibited by applicable law, customer agrees to waive any right they may have to commence or participate in any class action against Fabfix relating to any Claim and customer also agrees to opt out of any class proceedings against Fabfix. Notwithstanding the foregoing, Fabfix reserves the right to pursue the protection of intellectual property rights and confidential information through injunctive or other equitable relief through the courts.

BY PROVIDING THIS DOCUMENT, FABFIX IS NOT MAKING ANY REPRESENTATIONS REGARDING THE CORRECTNESS OR COMPLETENESS OF ITS CONTENT AND RESERVES THE RIGHT TO ALTER THIS DOCUMENT AT ANY TIME WITHOUT NOTICE.

EFFECTIVE DATE: 09/25/2009

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