

APEXFLAME

Terms and Conditions of Service

Effective Date	March 2026
Governing Law	State of Michigan, USA
Replaces	February 2025 edition

Unless otherwise specifically agreed in writing by an authorized Apexflame officer, these terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you ("**the Client**") and Apexflame ("**Apexflame**") providing the services contemplated therein.

SECTION 1 Interpretation

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

- (a) **Agreement** means this agreement entered into between Apexflame and the Client;
- (b) **Services** means the flammability testing and related services set out in any relevant Apexflame proposal, estimate or quote, any relevant Client purchase order, or any relevant Apexflame invoice, as applicable, and may comprise or include the provision by Apexflame of a test report;
- (c) **Report** or **Reports** shall have the meaning as set out in Clause 2.2 below;
- (d) **Intellectual Property Right(s)** means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howsoever existing;
- (e) **Confidential Information** shall mean all information in whatever form or manner presented which: (i) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (ii) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or is information, howsoever disclosed, which would reasonably be considered to be confidential by an objective observer; and
- (f) **Test Materials** means any samples, specimens, or materials provided by the Client to Apexflame for flammability testing and analysis. The Client acknowledges and agrees that Test Materials are consumable items that will be burned, destroyed, or otherwise consumed in the course of testing and will not be stored, returned, or held by Apexflame following completion of the Services.

1.2 The headings in this Agreement do not affect its interpretation.

SECTION 2 The Services

2.1 Apexflame shall provide the Services to the Client in accordance with the terms that Apexflame has made and submitted to the Client.

2.2 The Services provided by Apexflame under this Agreement and any memoranda, laboratory data, calculations, measurements, test results, estimates, notes and other material prepared by Apexflame in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed ("**Reports**") shall be only for the Client's use and benefit. The Client acknowledges and understands Reports are issued based on the Service as requested by the Client and that reliance on any Report is limited to the facts, test parameters, and representations set out therein.

2.3 In agreeing to provide the Services pursuant to this Agreement, Apexflame does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person, including but not limited to any regulatory compliance obligations.

2.4 Apexflame's testing services are performed in accordance with applicable industry standards and test methods as specified in this agreement or as otherwise agreed in writing. The Client acknowledges that test results apply only to the specific Test Materials submitted and tested under the specific conditions described in the Report.

2.5 The Client acknowledges that flammability testing is inherently destructive. All Test Materials submitted to Apexflame will be consumed, burned, or rendered unusable during testing. Apexflame has no obligation to store, preserve, or return any Test Materials following completion of the Services, and the Client waives any claim against Apexflame arising from the consumption or destruction of Test Materials in the ordinary course of testing.

SECTION 3 Apexflame's Warranties

3.1 Apexflame warrants exclusively to the Client that the Services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other flammability testing laboratories providing like services under similar circumstances.

3.2 In the event of a breach of the warranty set out in Clause 3.1, Apexflame shall, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in Apexflame's performance, of which Apexflame is notified in writing within twelve (12) months of the completion of services.

3.3 Apexflame makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by Apexflame (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

3.4 Apexflame does not warrant that Test Materials will pass any flammability test or meet any specific performance criteria. Test results reflect the performance of the specific Test Materials submitted under the specific test conditions employed.

SECTION 4 Client Warranties and Obligations

4.1 The Client represents and warrants:

(a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;

(b) that this Agreement has been executed by a duly authorized representative of the Client;

(c) that any information, Test Materials and related documents it (or any of its agents or representatives) supplied to Apexflame (including its agents, sub-contractors and employees) is true, accurate, representative, complete and is not misleading in any respect. The Client further acknowledges that Apexflame will rely on such information, Test Materials or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) as basis to perform the Services. Apexflame is not under any obligation to verify any of the foregoing as to their accuracy, completeness or truth;

(d) that the Client understands and accepts that Test Materials provided to Apexflame are consumable and will be destroyed during testing. The Client is responsible for ensuring that the quantity of Test Materials submitted is sufficient for the testing required. Apexflame shall have no obligation to collect, store, or dispose of Test Materials, and no liability for the destruction of Test Materials in the ordinary course of testing. The Client releases Apexflame from any claim relating to the consumption or destruction of Test Materials during testing;

(e) that any Test Materials provided are safe to handle and test under normal laboratory conditions, and that the Client has disclosed all known or suspected hazards associated with the Test Materials, including but not limited to toxicity, flammability characteristics, chemical composition, and any special handling requirements;

(f) that the Client has all necessary rights and permissions to submit the Test Materials for testing and that any information, Test Materials or other related documents (including without limitation certificates and reports) provided by the Client to Apexflame will not, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party; and

(g) that the Test Materials do not contain any prohibited, restricted, or regulated materials unless the Client has specifically disclosed such materials in writing and Apexflame has agreed in writing to accept and test such materials.

4.2 In the event that the Services provided are related to any third party, the Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement.

SECTION 5 Charges and Payment

5.1 The Client shall pay Apexflame the charges for the Services as set out in the relevant proposal, estimate, quote or invoice.

5.2 Unless otherwise agreed in writing, payment shall be due within thirty (30) days of the date of invoice.

5.3 Time for payment shall be of the essence. If the Client fails to make payment by the due date, Apexflame reserves the right to charge interest on overdue amounts at the rate of 1% per month (12% per annum) or the maximum rate permitted under Michigan's Legal Interest Rate Act (MCL § 438.31), whichever is less, from the due date until payment is received in full.

5.4 All charges are exclusive of applicable taxes, duties, or similar governmental charges, which shall be the responsibility of the Client.

SECTION 6 Intellectual Property Rights

6.1 All Intellectual Property Rights in Reports, methodologies, procedures, and any other materials created by Apexflame in connection with the Services shall remain the property of Apexflame.

6.2 Subject to payment in full of all charges due, Apexflame grants to the Client a non-exclusive, non-transferable license to use any Reports solely for the Client's internal business purposes. If a payment dispute arises, Apexflame shall provide the Client with ten (10) business days' written notice before suspending access to any Reports pending resolution of the dispute.

6.3 The Client shall not reproduce, modify, or distribute any Reports or other materials provided by Apexflame without Apexflame's prior written consent.

SECTION 7 Confidentiality

7.1 Each party agrees to keep confidential all Confidential Information received from the other party and shall not disclose such information to any third party without the prior written consent of the disclosing party, except as required by law or court order.

7.2 The obligations in this Clause 7 shall not apply to information that: (a) is or becomes publicly available through no breach of this Agreement; (b) was lawfully in the receiving party's possession prior to disclosure; (c) is independently developed by the receiving party; or (d) is lawfully received from a third party without restriction.

7.3 The obligations set out in this Clause 7 shall survive termination of this Agreement for a period of five (5) years, except that any Confidential Information that constitutes a trade secret shall be protected for as long as it remains a trade secret under applicable law, with no time limitation.

SECTION 8 Data Protection

8.1 Each party shall comply with all applicable data protection and privacy laws and regulations in connection with the performance of this Agreement.

8.2 To the extent that either party processes personal data on behalf of the other party, such processing shall be conducted in accordance with applicable law and the parties shall enter into appropriate data processing agreements as required by law.

SECTION 9 Limitation of Liability

9.1 Nothing in this Agreement shall exclude or limit either party's liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; or (c) any other liability that cannot be excluded or limited under applicable law.

9.2 Subject to Clause 9.1, Apexflame's total aggregate liability to the Client under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall not exceed the greater of: (a) the total fees paid by the Client to Apexflame under this Agreement in the twelve (12) months preceding the event giving rise to the claim; or (b) five thousand US dollars (USD \$5,000).

9.3 Subject to Clause 9.1, and except to the extent caused by Apexflame's gross negligence or wilful misconduct, Apexflame shall not be liable to the Client for any: (a) loss of profits; (b) loss of business; (c) loss of revenue; (d) loss of anticipated savings; (e) loss of data; (f) loss of goodwill; or (g) indirect or consequential loss, whether such losses were foreseeable or not.

9.4 The Client acknowledges that Apexflame's Reports are provided solely for the Client's use and that Apexflame shall have no liability to any third party who may rely on such Reports.

9.5 The Client acknowledges that Test Materials are consumed during flammability testing, and that no claim shall lie against Apexflame for the destruction, consumption, or unavailability of Test Materials following or during testing, provided that Services were performed in accordance with Clause 3.1.

SECTION 10 Force Majeure

10.1 Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, war, terrorism, civil unrest, labor disputes, governmental actions, epidemics or pandemics, cyberattacks or failures of critical IT infrastructure, critical supplier failures, or failures of third-party utilities or services.

SECTION 11 Indemnification

11.1 The Client shall indemnify, defend and hold harmless Apexflame, its officers, directors, employees, agents and sub-contractors from and against all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or relating to:

- (a) any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- (b) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Client's Test Materials or products;
- (c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above, including any failure to disclose hazards associated with Test Materials;
- (d) any claims or suits arising as a result of any misuse or unauthorized use of any Report issued by Apexflame or any Intellectual Property Rights belonging to Apexflame (including trademarks) pursuant to this Agreement;
- (e) any claims arising out of or relating to the Client's unauthorized disclosure of Reports to third parties, or any third party's use of or reliance on Reports that were disclosed by the Client without Apexflame's prior written consent. This clause does not apply to disclosures of Reports that were authorized in writing by Apexflame; and
- (f) any exposure to, or injury or damage caused by, Test Materials provided by the Client, including any hazardous, toxic, or dangerous materials.

11.2 The obligations set out in this Clause 11 shall survive termination of this Agreement.

SECTION 12 Insurance

12.1 Each party shall be responsible for the arrangement and costs of its own insurance which includes, without limitation, professional indemnity, employer's liability, and property insurance.

12.2 The Client acknowledges that although Apexflame maintains worker's compensation and employer's liability insurance as required under Michigan law, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services.

12.3 Apexflame expressly disclaims any liability to the Client as an insurer or guarantor to the Client's Test Materials or products.

SECTION 13 Termination

13.1 This Agreement shall commence on the date of execution and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

13.2 This Agreement may be terminated by:

- (a) either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been sent by that party requesting the other to remedy such breach;
- (b) Apexflame on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or
- (c) either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to bankruptcy proceedings or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a receiver is appointed of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business.

13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay Apexflame for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.

13.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.

SECTION 14 Assignment and Sub-Contracting

14.1 Apexflame reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to sub-contractors. Where Client approval is required, such approval shall not be unreasonably withheld or delayed, and shall be deemed granted if the Client does not provide written objection within ten (10) business days of written notice from Apexflame. Apexflame may also assign this Agreement to any affiliated company on notice to the Client.

14.2 The Client may not assign, transfer, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Apexflame.

SECTION 15 Governing Law and Dispute Resolution

15.1 This Agreement, and any work performed pursuant to this Agreement, shall be governed by and construed in accordance with the laws of the State of Michigan, United States of America, without regard to its conflicts of law principles. Any action brought relating to this Agreement shall be venue in the courts of the State of Michigan.

15.2 The parties agree to attempt to resolve any dispute arising out of or relating to this Agreement through good faith negotiations. If the parties are unable to resolve the dispute within thirty (30) days, either party may request non-binding mediation administered by the American Arbitration Association (AAA) or JAMS before initiating litigation. For disputes with a value below ten thousand US dollars (USD \$10,000), either party may proceed directly to litigation without the mediation step. If the parties are unable to resolve the dispute through mediation, either party may pursue available legal remedies in accordance with Michigan law.

SECTION 16 Miscellaneous

16.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable under Michigan law, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Apexflame and the Client shall immediately commence good faith negotiations to agree to an alternative arrangement.

16.2 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other.

16.3 The failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.

16.4 No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

16.5 This Agreement contains the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, invoice, statement or other similar document will add to or vary the terms of this Agreement. Apexflame shall draw the Client's attention to this clause when issuing a proposal, estimate, or quote to ensure the Client is aware that Client purchase order terms do not form part of this Agreement.

16.6 No modification, waiver or amendment of any of these terms and conditions, including any assignment of the Client's rights and responsibilities hereunder, shall be binding upon Apexflame unless agreed to in a writing signed by an authorized representative of Apexflame.

16.7 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

16.8 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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