

Acktar Terms and Conditions of Sale

1 General

1.1 Any quotation, pro-forma invoice, price list or other similar document howsoever made or issued by Acktar ("the Company") and any products furnished or services rendered are, unless otherwise expressly agreed in writing by the Company, furnished, made or issued subject to these Standard Terms and Conditions of Sale. All other terms and conditions shall be excluded which shall include, without limitation, any terms or conditions which a Purchaser purports to apply under any purchase order, order confirmation, specification or other document. These Standard Terms and Conditions of Sale apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Company.

1.2 No Order resulting from any quotation, pro-forma invoice, price list, proposal or other similar document made or issued by the Company shall be binding unless and until accepted in writing by the Company. Company's failure to object to any term or condition contained in any communication from Purchaser shall not be deemed a waiver of these Standard Terms and Conditions of Sale.

1.3 The language of the Company's Standard Terms and Conditions of Sale is the English language. If these Terms and Conditions of Sale are translated into another language, the English language text shall in any event prevail.

1.4 The term "Goods" shall be understood to mean either a) the coatings applied by the Company to parts submitted by a Purchaser, or b) the parts fully manufactured by the Company, or c) parts submitted by the Purchaser and subsequently coated by the Company – all in conformance with the context. In any case the monetary value of Goods refers to the value added by the Company and does not include the value of the parts submitted for coating.

2 Prices and Payment

2.1 Prices are in the currency specified on the Companies offer document (Quotation, Price List, etc.) - Ex Works as per INCOTERMS in force at the date the Order or Contract is made. All prices are net and no settlement discount is allowed. All prices shall be exclusive of any Value Added Tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Purchaser shall pay.

2.2 In the case of deliveries to Purchasers in Israel, unless otherwise agreed in writing, accounts are payable not later than 30 days net from the date of invoice. In the case of export orders, except as otherwise agreed in writing, payment shall be by an advance payment of 30% and the remainder by an irrevocable Letter of Credit in US Dollars on a bank acceptable to the Company and confirmed in favor of the Company and payable on sight against shipping documents.

2.3 If the Purchaser fails to pay the Company any sum due pursuant to any Order or Contract, the Purchaser shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate accruing on a daily basis until payment is made.

3 Specifications and Performance

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation. Any performance figures given by the Company are based upon the Company's experience and are such as it expects to obtain on test in its factory and shall be subject to reasonable tolerance limits. These are issued or published for the sole purposes of giving an approximate idea and any deviations from such figures shall not be the basis of any claim against the Company, except where specifically agreed, in writing, to the contrary.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purposes of giving an approximate idea of the Goods described in them. They should not form part of the Order or Contract.

4 Tests

Goods supplied by the Company are inspected and submitted to the Company's standard tests before dispatch. Additional tests may be carried out as agreed, in writing, at the request of the Purchaser and will be charged as extras.

5 Export

The Purchaser shall be responsible for compliance with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties or taxes on them.

6 Delivery and Acceptance

6.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business. The Purchaser shall take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.

6.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and the time for delivery shall not be made of the essence by notice. If no date is specified, delivery shall be within a reasonable time.

6.3 If for any reason the Purchaser fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Purchaser has not provided appropriate instructions, documents, licenses or authorizations: a) risk in the Goods shall pass to the Purchaser (including for loss or damage caused by the Company's negligence); b) the Goods shall be deemed to have been delivered; and c) the Company may store the Goods until delivery, whereupon the Purchaser shall be liable for all related costs and expenses (including, without limitation storage and insurance).

6.4 The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.

6.5 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

6.6 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Order or Contract rate against any invoice raised for such Goods.

6.7 The Company may deliver the Goods by separate installments and/or transshipments. Each separate installment and/or transshipment shall be invoiced and paid for in accordance with the provisions of the Order or Contract. Each installment and/or transshipments shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment and/or transshipments shall entitle the Buyer to repudiate or cancel any other Contract or installment.

6.8 No delay in the delivery of the Goods (even if caused by the Company's negligence), shall entitle the Purchaser to terminate or rescind the Order or Contract unless such delay exceeds 180 days.

6.9 Immediately upon delivery the Purchaser shall institute its acceptance procedures and notify the Company of acceptance of the Goods not later than 15 days after the date of delivery.

7 Variations

In the event that the Purchaser requests, and the Company agrees to, any variation to the Goods to be supplied or to the terms of the Order or Contract which involves the Company incurring extra cost, or should the Company incur extra cost owing to the suspension of work by the Purchaser's instructions or lack of instructions, or for any other cause for which the Company is not responsible, such extra cost may be charged by the Company at its then current rates and if so charged shall be paid for by the Purchaser on demand.

8 Warranty

8.1 Subject to the following conditions the Company warrants that at time of delivery and for a period of 12 months from the date of delivery to the Purchaser, all coatings will be free from defects in material and workmanship. This warranty is extended to the original Purchaser from Company and is not transferable.

8.2 This warranty applies to Acktar coatings deposited on a bare substrate. The warranty does not apply to coatings deposited on a pre-coated substrate unless agreed to in advance by Acktar in writing.

8.3 The Company's sole obligation under this warranty shall be limited to repairing or replacing any coating, which upon inspection and in the judgment of the Company is defective in material or in workmanship. The Company will not be responsible for the cost of repairs performed by anyone other than Company and this warranty will be cancelled for any coatings which have been repaired by anyone other than Company.

8.4 Coated parts will be accepted for repair only after written authorization issued by the Company subsequent to having received notification in writing within the warranty period of a defect or non-conformance. The warranty will not apply if the Purchaser makes any further use of such

parts after giving such notice. This warranty will not apply to coatings which appear to have been damaged in transit – for which the Purchaser must file a claim against the carrier – nor to any coating that has been subject to misuse, neglect, accident, operation outside of the coating's maximum ratings, improper application, or use in violation of instructions furnished by the Company.

8.5 Upon receiving such authorization, and in accordance with instructions of the Company, coated parts for which adjustment is requested shall be returned to the Company for examination with all shipping, brokerage and customs charges prepaid by the Purchaser. Such parts shall be packed in the original shipping container or in a manner substantially equivalent to the original packing used by the Company.

8.6 Purchaser will be notified if returned coatings are found by the Company to be within specifications or are found to be not covered by the Warranty and the Purchaser will be requested to provide disposition instructions. If requested the parts will be returned subject to a handling charge billable to the Purchaser. If no disposition instructions are received from Purchaser within thirty (30) days the parts will be destroyed

8.7 Company will be permitted upon request to observe Purchaser's incoming inspection testing procedures at any time that is mutually acceptable.

8.8 The entire warranty herein provided shall be the Purchaser's exclusive remedy, and is expressly in lieu of and excludes all other expressed or implied warranties of merchantability and fitness for a particular use. In no event shall Company be liable to the Purchaser for damages, including but not limited to, all general, special, or consequential damages, all loss, damages, or expense arising out of or in connection with the use, loss of use (whether separately or in combination with any other equipment) or performance of the coatings, and damages from any other cause except as specifically provided for in this warranty.

9 Intellectual Property and Copyright

9.1 The Company retains full ownership of all intellectual property including any inventions, designs and processes already made or evolved in preparing the quotations, or resulting from any work carried out in the execution of any Order or Contract and the Purchaser shall, except as specifically agreed to the contrary in writing, keep secret and procure that its agents, employees and subcontractors shall keep secret any information relating to the Company's products acquired under the Order or Contract.

10 Passing of Property and Title

10.1 The Goods are at the risk of the Purchaser from the time of delivery.

10.2 Ownership of the Goods shall not pass to the Purchaser until the Company has received in full (in cash or cleared funds) all sums due to it in respect of: a) the Goods; and b) all other sums which are or which become due to the Company from the Purchaser on any account.

10.3 Until ownership of the Goods has passed to the Purchaser, the Purchaser shall: a) hold the Goods on a fiduciary basis as the Company's bailee; b) store the Goods (at no cost to the Company) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Company's property; c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and d) maintain the Goods in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risk to the reasonable satisfaction of the Company. On request the Purchaser shall produce the policy of insurance to the Company.

10.4 The Purchaser's right to possession of the Goods shall terminate immediately if: a) the Purchaser has a bankruptcy order made against him or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or b) enters into liquidation (whether voluntarily or compulsory), or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or c) fails to observe or perform any of his/its obligations under the Order or Contract or any other contract between the Company and the Purchaser, or d) is unable to pay its debts or e) the Purchaser ceases to trade; or if the equivalent of any of the events described above under the law of any jurisdiction occurs.

10.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company. The Purchaser grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.

10.6 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Purchaser's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by the Company to the Purchaser in the Order or Contract in which they were invoiced to the Purchaser.

10.7 On termination of the Order or Contract, howsoever caused, the Company's but not the Purchaser's rights contained in para 10 shall remain in effect.

11 Limitation of Liability

Irrespective of the other provisions of these Standard Terms and Conditions of Sale, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Order or Contract shall be limited to the Order or Contract price; and b) the Company shall not be liable to the Purchaser for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct or indirect or consequential, or any claims for consequential compensation whatsoever (however so caused, including delay in delivery) which arise out of or in connection with the Order or Contract.

12 Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Order or Contract or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock outs, strikes or other labor disputes (whether or not relating to either parties workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Purchaser shall be entitled to give notice in writing to the Company to terminate the Order or Contract.

13 General

13.1 Each right of remedy of the Company under the Order or Contract is without prejudice to any other right or remedy of the Company whether under the Order or Contract or not.

13.2 If any provision of the Order or Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability, or unreasonableness be deemed severable and the remaining provisions of the Order or Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Order or Contract shall not be construed as a waiver of any of its rights under the Order or Contract.

13.4 Any waiver by the Company of any breach of, or default under, any provision of the Order or Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Order or Contract.

13.5 The formation, existence, construction, performance, validity and all aspects of the Order or Contract shall be governed by Israeli Law.

14 Notices

All communications between the parties about the Order or Contract shall be in writing and sent to the registered office of the addressee or to any address of a party set out in any document which forms part of the Order or Contract and shall be deemed as having been received at a time in accordance with the normal time of transmission for the transmission method.