



Acorn Surface Technology

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions these words have the following meanings:

“the Company”	Acorn Surface Technology Ltd
“the Contract”	any contract under which the Company provides Services to the Customer
“the Customer”	the individual, firm, company or other party with whom the Company contracts
“Customer’s Goods”	the whole or any part of the goods or materials delivered by the Customer to the Company to, or upon which, services are to be carried out.
“the Relevant Date”	the date referred to in Clause 5 hereof
“Services”	the whole or any part of the surface treatment or other services which the Company is to supply or carry out

1.2 References to clauses (except where the context otherwise requires) are references to the clauses set out below

1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. FORMATION OF THE CONTRACT

No order in pursuance of a quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company.

The Contract will be subject to these Conditions. Except as provided in clause 2.3 no representative or agent of the Company has authority to agree any term or make any representation which is inconsistent with these Conditions or to enter into any contract except on the basis of them.

Any term or representation inconsistent with these Conditions will only bind the Company if it is in writing and signed by one of its directors. The words “unless otherwise agreed in writing by the Company” in these Conditions means unless otherwise agreed in writing and signed by a director of the Company.

Unless otherwise agreed in writing by the Company these Conditions will override any terms or conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.

Any illustrations, temperatures, capacities, descriptions or specification contained in the Company’s catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the Services and will not form a representation or be part of the Contract unless otherwise agreed by the Company in writing.

Where the Company has not acknowledged the Customer’s order in writing, these conditions will apply to the Contract provided the Customer has had prior notice of them.

The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

Unless otherwise agreed in writing by the Company, the Customer will deliver the Customer’s Goods to such place as the Company may specify for the Services to be carried out and the Customer shall be solely responsible for the costs and risks thereof.

The Company may, at its option, check the Customer’s goods for quantity prior to the Services being carried out and any discrepancy which the Company may discover between the quantity claimed by the Customer and the quantity as established by the Company will be notified to the Customer. The quantity so ascertained by the Company will be final and binding unless the contrary is established by the Customer to the reasonable satisfaction of the Company.

3. SPECIFICATION AND INFORMATION

3.1 If Services are carried out to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer then

3.1.1 the suitability and accuracy of that specification, instruction or design will be the Customer’s responsibility and

3.1.2 The Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising under the Consumer Protection Act 1987 by reason of such specification, instruction or design.

3.2 The Company reserves the right to make any changes in the specification of the Services which are required to conform with any applicable safety or other statutory requirements. Where the Services are to be completed to the Customer’s specification the Company reserves the right to make any changes in the specification of the Services which do not materially affect the quality or performance of the Customer’s goods.

3.3 The Customer warrants that it will pass on to all third parties to whom it may supply the Customer’s Goods all information as to the use and safe handling of the Customer’s Goods which has been provided to the Customer by the Company

4. PRICES

4.1 Unless otherwise agreed in writing by the Company the Company’s quotations for the Services are provisional and may be altered at any time for any reason.

4.2 Prices charged will be those current at the time of completion of the Services. The Company may increase its prices at any time to take account of any increase in the cost to the Company of supplying the Services. The Company may also increase its prices at any time to take account of any error or inadequacy in any specification, instruction or information provided by the Customer or any modification carried out by the Company at the Customer’s request.

4.3 All prices quoted are exclusive of VAT and the Customer shall pay any and all duties, taxes or other government charges payable in respect of the Services.

4.4 Although the Company shall have no obligation to re-use such materials, the Customer shall ensure that prior to delivery to the Company the Customer’s Goods are suitably packaged in materials which, where appropriate can be re-used by the



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Company upon completion of the Services. Where such materials are in the reasonable opinion of the Company not re-usable or are unsatisfactory in any way the Company will pack the Customer's goods at it sees fit and any additional costs in respect thereof will be charged to the Customer. The Customer must give written notification to the Company where special packaging is required and the Customer will be responsible for the costs thereof.

5. PAYMENT

- 5.1 For the purpose of these Conditions the Relevant Date means the date on which the Services or any part thereof for which a separate invoice is rendered are completed.
- 5.2 Unless otherwise agreed in writing by the Company, full payment will be made by the Customer in cash not later than thirty days after the end of the month in which the Relevant Date falls.
- 5.3 Time for payment will be of the essence for the Contract
- 5.4 Without prejudice to any other rights of the Company, interest will be payable on all overdue accounts at 4% above Lloyds TSB Bank Plc base rate from time to time. For the purposes of clause 7.2 the full purchase price of the Services will include any interest payable under this clause.
- 5.5 Non-payment on a due date will entitle the Company to demand payment of all outstanding balances whether due or not and/or cancel all outstanding orders without prejudice to any other rights it may have
- 5.6 The Customer will not be entitled to withhold payment of any invoice by reason of any right of set-off or any claim or dispute with the Company
- 5.7 Without prejudice to any other rights it may have, the Company will have the right to suspend performance of its obligations if it reasonably believes that the Customer will not make payment in accordance with this clause.
- 5.8 The Company shall have a general lien on the Customer's Goods and such lien shall be exercisable in respect of all sums due from the Customer to the Company. The Company shall be entitled on the expiration of 28 days' written notice to dispose of such Customer's Goods in such manner and at such price as it thinks fit and to apply the proceeds first towards all sums due to the Company and the residue (if any) to be paid to the Customer. The Customer shall indemnify the Company in respect of any expenses, losses or claims the Company may incur as a result of the reliance of the Company upon such warranty.

6. COMPLETION OF SERVICES AND REDELIVERY OF CUSTOMER'S GOODS

- 6.1 Unless otherwise agreed in writing by the Company
 - 6.1.1 The Customer will collect the Customer's Goods or any instalments thereof from the Company's premises or as the Company may direct within 14 days after receiving notification from the Company that the Customer's Goods are ready and
 - 6.1.2 if the Company agrees to redeliver the Customer's Goods elsewhere the Customer will take redelivery of the Customer's Goods upon completion of the Services at the nearest convenient unloading point to the Customer's works or appropriate site and the Customer shall be responsible for notifying the Company of any restriction of access such as weight, width, height or unloading hours. The Company shall have the sole right to determine the unloading point. The customer will give the Company all necessary instructions and approvals for redelivery within seven days of notification that the Customer's Goods are ready for redelivery and off-loading will be at the Customer's risk and expense.
- 6.2 The Company will be entitled to add a reasonable charge for redelivery to the Contract price.
- 6.3 The Company will try to redeliver the Customer's Goods or complete the Services by any agreed date or within any agreed period but such dates or periods are estimates only given in good faith and the Company will not be liable for any failure to redeliver or complete by such dates or within such periods. Time for redelivery will not be of the essence of the Contract and will also be conditional upon receipt of final instructions for redelivery being received promptly. The Customer's Goods may be redelivered by the Company in advance of any agreed date upon giving reasonable notice to the Customer.
- 6.4 If the Company is delayed in or prevented from redelivering the Customer's Goods or carrying out the Services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the Customer's Goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause beyond the reasonable control of the Company, the Company may cancel or suspend the Customer's order without incurring any liability for loss or damages.
- 6.5 The Company will try to comply with reasonable requests by the Customer for postponement of redelivery of the Customer's Goods or completion of Services but shall not be under any obligation to do so. Where redelivery is postponed otherwise than due to the Company's default the Customer shall pay all costs and expenses of delay including a reasonable charge for storage and transportation.

7. CANCELLATION OR DEFERMENT

- 7.1 The Company may defer any redeliveries of the Customer's Goods or performance of Services or treat the Contract as determined if the Customer fails to make any payment when it becomes due or enters into any composition or arrangement with its creditors or has a winding-up order made against it or has an administrative receiver or administrator appointed or passes a resolution for winding-up or a Court makes an order to that effect or if the Customer breaches any of these Conditions.
- 7.2 Clause 7.1 is without prejudice to the Company's right to the full contract price for the Services and damages for any loss suffered in consequence of the determination of the Contract.
- 7.3 Cancellation by the Customer will only be accepted at the discretion of the Company. Acceptance of the cancellation will only be binding on the Company if in writing and signed by a director. Any costs or expenses incurred by the Company up to



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the date of cancellation and all loss or damage resulting from the cancellation will be paid by the Customer to the Company forthwith.

8. DEFECTIVE SERVICES LIMITATION OF LIABILITY

- 8.1 The Customer fully accepts that the carrying out of the Services necessarily involves risk to the Customer's Goods including, but not limited to localised overheating, corrosion, erosion or dimensional change, and the Customer enters into the Contract upon the basis that the exclusions of liability in this Clause 8 are reasonable due to the nature of the Customer's Goods and the Services unless specifically agreed otherwise in writing by a director of the Company.
- 8.2 In view of the disproportionate difference between the likely value of the Customer's Goods and the price of the Services the Company's liability in respect of any default in Services or in respect of any error in any information provided to the Customer concerning the Services or the condition or performance of the Customer's Goods which has formed a representation or is part of the Contract or in respect of negligence or willful default on the part of the Company or its servants or agents shall be limited as thereafter provided.
- 8.3 The Customer accepts that where Services are carried out in respect of small articles, wastage of up to 3% of the total quantity is to be accepted as normal.
- 8.4 Subject to the provisions of sub clause 8.3 the Customer will carefully examine the Customer's Goods on receipt and notify the Company and the carrier immediately of any damage or shortage. Within twenty one days of receipt or (in the case of total loss) of receipt of the invoice or other notification of dispatch the Customer will give the Company written confirmation of the damage or shortage. Within fourteen days of request the Customer will provide authority for the Company's servants or agents to inspect any damaged Customer's Goods.
- 8.5 The Company's liability in respect of any default or error as described in Clause 8.2 above shall, save as otherwise provided in these Conditions and except in respect of death or personal injury, twice the Contract price for Surface Treatment Services, or £1000 for any service, whichever shall be the lesser. The Relevant Services are the services which the Company carries out or agrees to carry out to those of the Customer's Goods affected by the default or error. The Company may at its option and where feasible carry out the Relevant Services again in lieu of making any payment to the Customer.
- 8.6 The Company will only be liable to the Customer in respect of the matters set out in clauses 8.2 and 8.5 provided that
- (i) The Customer informs the Company of the defect or default or error as soon as is reasonably practicable and
 - (ii) in any event the defect, default or error is notified to the Company within three months of the redelivery of the Customer's Goods after completion of the Services and
 - (iii) authority is provided for the Company's servants or agents to inspect the same without delay.
- 8.7 The Company shall have no liability in respect of any damage or loss incurred by the Customer by reason of the Customer's failure to provide adequate and accurate information regarding the Customer's Goods.
- 8.8 Save as provided in these Conditions the Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect or error as aforesaid.
- 8.9 Except for the terms implied in the Contract by section 2 of the Supply of Goods and Services Act 1982, all conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as they are contained in these Conditions or otherwise expressly agreed by the Company in writing. If any legislation makes it unlawful to exclude or purport to exclude any term from the Contract this clause will not apply to such term.
- 8.10 The Company is concerned to ensure that the price of Treatment remains competitive and taking into account:
- (i) the fact that the Customer is in a better position than the Company to know or ascertain the amount of any loss which will arise out of any defect in the treated Goods
 - (ii) the fact that the extent of the damage that might be caused or alleged to be caused to the Customer or to the Goods is disproportionate to the amount that can reasonably be charged (and is charged) by the Company to the Customer for the Treatment
 - (iii) the terms and conditions that the Company's own suppliers are prepared to supply goods or services to the Company - this must necessarily involve the incorporation of the terms and conditions set out in this Condition 8.

9. SUITABILITY OF CUSTOMER'S GOODS

The Customer warrants that all Customer's Goods supplied to the Company for processing are suitable for the processing requested by the Customer and that all matters which may affect such suitability have been made known to the Company in writing. The Customer will indemnify the Company against any costs, liabilities, expenses or claims arising by reason of the Customer's breach of such warranty. The Company reserves the right to decline to carry out or complete any service which it has agreed to do if in its reasonable opinion the Customer's Goods are not suitable, without incurring any liability therefor.

10. TESTING

Where the Company agrees to carry out tests upon the Customer's Goods when the Services are completed, where such tests might involve the destruction of some or all of the Customer's Goods, the supply of test pieces shall be the responsibility of the Customer. In the absence of the supply of test pieces by the Customer the Company may, at its discretion, use its own test pieces but cannot guarantee that the same will give identical results to those which would be achieved by testing the Customer's Goods. The results of such tests shall be notified to the Customer in Writing.

11. RISK IN CUSTOMER'S GOODS



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- 11.1 The Company takes responsibility for insuring the Customer's Goods against loss or damage, but excluding consequential loss or damage, due to fire, aircraft, explosion, earthquake, riot, civil commotion, malicious damage, storm, tempest, flood, burst pipes, impact, accidental damage and theft whilst on the Company's premises or transport up to a maximum of £50,000. Any amount over this amount is the responsibility of the Customer
- 11.2 Risk of damage to or loss of the treated Goods shall pass to the Customer:-
- (i) in the case of treated Goods to be collected from the Company's premises, 24 hours after the time the Company notifies the Customer that the treated Goods are available for collection; or
 - (ii) in the case of treated Goods to be delivered, at the time of delivery or, if the Customer wrongfully fails to take delivery of the treated Goods, the time when the Company has tendered delivery of the treated Goods.
- 11.3 Where the Contract provides for delivery of the treated Goods, the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer:-
- (i) gives written notice to the Company within (twenty one) days after the date of the Company's advice note or other notification of the dispatch of the treated Goods in the case of non-delivery, or within seven working days of the delivery of the treated Goods in any other case; and
 - (ii) where the treated Goods are transported by an independent freight carrier complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit
- 11.4 The Customer is responsible in all cases for unloading the delivery vehicle and shall be responsible for all loss of or damage to the treated Goods during the course of such unloading
12. GENERAL
- 12.1 These Conditions and the Contract are governed by English Law and the parties agree to submit to the jurisdiction of the English Courts in the event of any dispute
- 12.2 The headings in these Conditions are inserted for convenience only. They are not to affect their interpretation or construction
- 12.3 If any provision of these Conditions becomes illegal or void for any reason, the validity of the remaining provisions shall not be affected
- 12.4 Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the Conditions.