

## ELEMENT MATERIALS TECHNOLOGY

### TERMS AND CONDITIONS (CANADA)

#### 1. Formation of Contract

- 1.1 These terms and conditions ("**Terms and Conditions**") together with any quotation, proposal, estimate, or fee quote ("**Quotation**") provided by or on behalf of the Company (as defined in this sub-condition) shall apply to all contracts for the supply of testing, calibration and/or other services ("**Services**") carried out by BM TRADA Certification Canada Inc. ("**Company**") providing the services contemplated therein to the customer ("**Customer**").
- 1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to in the Customer's purchase order or acceptance of a quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in the Company's confirmation of order, or implied by law (unless the law in

means, in relation to a party, that party, any subsidiary or holding company of that party, and any subsidiary of a holding company of that party.

3.7 The Customer undertakes that during the provision of the Services and



8.7 The Customer acknowledges that the above provisions of this condition 8

- 11.3 In addition to any specific Customer obligations set out in the Quotation and the provisions of sub-condition 11.2, where Services are provided at the premises of the Customer, the Customer shall: (i) provide the Company with necessary access to any Customer premises; (ii) ensure that any premises provided by the Customer for the provision of any part of the Service is suitable for that purpose; (iii) provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc.) relevant to any Customer supplied premises; and (iv) provide the Company with any permits required for the performance of the Service.

## **12. Court and Other Proceedings**

- 12.1 In the event that the Customer requires the Company to present the results or findings of Services carried out by the Company in witness statements, court hearings or other legal proceedings, the Customer shall pay to the Company such costs and fees for such presentations and the preparation thereof as the Company may charge to customers generally from time to time for such services and the Customer shall be liable for such costs in addition to the Consideration
- 12.2 In the event that the Company is required by a party other than the Customer to present the results or findings of Services carried out by the Company for the Customer in any legal proceedings relating to the Customer, the Customer shall pay all costs and fees arising from any services which the Company is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing or legal proceeding and reasonable travel and out-of-pocket expenses. The Customer shall pay all such costs, whether or not the Customer has paid all outstanding Consideration under the Contract and whether or not the Company has closed the Customer's file in respect of the matter.
- 12.3 If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Company in writing before the Services are carried out. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute dis

is possible to do so in order to make it enforceable while retaining its purpose, or severed from the Contract if it is not possible to do so, and the remaining provisions of these Terms and Conditions, including any remaining default remedies, shall be given effect in accordance with the intent hereof. In the Company's sole discretion it may terminate the Contract by not less than seven (7) days' written notice to the Customer in the event that it considers that such deletion will have a materially adverse effect on its rights under the Contract.

**18. No Partnership or Agency**

18.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, make any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person or entity.

**19. Third Parties**

A person who is not a party to the Contract shall not have any rights under the Contract to enforce any term of the Contract. The Contract is for the sole benefit of the parties hereto and their respective successors and permitted









- 4.1.5 the Customer fails to maintain or demonstrate an effective System such that the confidence in the certificate is adversely affected; or
- 4.1.6 the Customer has persistently or seriously failed to meet certification requirements.