

# ELEMENT MATERIALS TECHNOLOGY

## TERMS AND CONDITIONS (FR)

### 1. Formation of Contract

1.1 These terms and conditions **Terms and Conditions** any quotation, proposal, estimate or fee quote ("**Quotation**") provided by or on behalf of the Company (as defined below) shall apply to all contracts for the supply of testing, calibration and/or other services  
**Services** Element Materials Technology Toulouse SAS  
**Company** to a 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

question cannot be excluded), trade custom, practice or course of dealing. **including include in**

**particular**

and shall not limit the sense of the words preceding those terms.

1.3 Written and oral Quotations shall be valid for sixty (60) days from the date thereof and the Company may withdraw any such Quotation at any time. No Quotation given by the Company shall be an offer to contract with any person and no contract shall come into existence except in accordance with sub-condition 1.4.

1.4 The Customer's purchase order or the Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Services specified in the Quotation upon these Terms and Conditions. No offer placed by the Customer shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company or (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of those Services on these Terms

**Contract**

1.5 No acceptance or acknowledgement, even if in writing and signed by the pertaining to the Services shall constitute acceptance of any provision of

or adds to these Terms and Conditions unless the Company specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 2.1.

1.6 The delivery to the Company by the Customer of any item for testing or **Sample**

by the Customer to the Company for the provision of any similar services shall, upon acceptance of that Sample or request by the Company, -condition 1.4). If the Company

begins such testing, calibration or similar services on that Sample, the offer shall be deemed to have been accepted by the Company and a Contract shall be formed. These Terms and Conditions shall apply to that Contract.

2.



- or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of the Company) to the extent such claim is in excess of the Consideration paid for the Services under the Contract that are subject to the claim; or
- 8.7.3 any claims arising as a result of any misuse or unauthorized use of any Reports issued by the Company or any Intellectual Property Rights belonging to the Company (including trade marks) pursuant to this Contract.
- Notwithstanding any other provision of these Terms and Conditions, the Customer's liability under this indemnity shall be unlimited.
- 8.8 Nothing in these Terms and Conditions limits or excludes the liability of the Company for:
- 8.8.1 death or personal injury resulting from negligence; or
- 8.8.2 liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
- 8.8.3 any other matter which may not be limited or excluded by law.
- 8.9 As from and following the effective date of assignment, the Company shall be fully released from any responsibility or liability under or in connection with the Contract. By way of derogation from Section 1222 of the French Civil Code, if the Company fails to meet its contractual obligations under the Contract for any reason whatsoever (including reasons of force majeure, as defined above), the Customer shall not be entitled to perform or to have a third party perform those contractual obligations without prior express consent of the Company. Neither any reimbursement of fees, nor any advance may be required from the
- 8.10 This condition 8 shall survive termination of the Contract.
- 9. Intellectual Property Rights**
- 9.1 In this condition 9, the following definitions apply:  
**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright, "*droit d'auteur*" and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (now existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 9.2 All Intellectual Property Rights (including copyright in records, scientific documentary, primary data or electronic means of handling data) produced during any Service shall belong to and remain the property of the Company unless otherwise expressly agreed as part of the Contract.
- 9.3 Ownership, copyright and "*droit d'auteur*" in the Report shall remain with the Company. Upon the Customer discharging all its obligations under the Contract, including payment of the Consideration, the Customer will obtain an irrevocable, royalty-free, non-exclusive licence to use the Report (including the right to sub-licence), subject to the terms of sub-condition 9.2 and this sub-condition 9.3.
- 9.4 All Intellectual Property Rights in all service mark(s), trade mark(s), certification mark(s) and other names and logos owned by the Company shall remain the property of the Company and cannot be sold or licensed by the Customer.
- 9.5 When certification is granted the Company shall award a licence to the Customer to use the Company's certification mark(s) and logos for the certification validity period, subject to the applicable terms of use (as amended from time to time) which are issued with every certification and are available on request.
- 9.6 The Customer shall indemnify the Company against all losses to which the Company may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Customer for the performance of the Services involves the infringement of any Intellectual Property Rights of any third party.
- 9.7 Except for the rights to use set forth in condition 10, this Contract does not grant and shall not be construed as granting, any rights to either party to any name or mark of the other party. Neither party is granted any right
- 10.1.4 present or respond as required by law or any regulatory body.
- 10.2 The Customer hereby undertakes that it shall not:
- 10.2.1 except as set out in sub-condition 10.1, disclose a Report (or information contained within a Report) to any third party without the prior written consent of the Company;
- 10.2.2 replicate or present a Report except in full as delivered by the Company, or any portion thereof, in any manner that might
- 10.2.3 use a Report, or any portion thereof, in any manner that might
- give any press release or make any other public announcement regarding this Contract, the Services or any transaction between the parties without the express prior written consent of the other party.
- 10. Use of Reports**
- 10.1 The Reports constitute confidential information that is to be protected and shall be used solely to:
- 10.1.1 assist the Customer in completing its internal requirements and the Company in performing Services for the Customer;
- 10.1.2 requirements for the delivery and use of the data recited in the Reports;
- 10.1.3 present or respond on a claim in a court of law (provided that, where this is the purpose for which the Report is instructed this has been agreed with the Company in advance of the Report being instructed); or



