

ELEMENT METECH KDK GmbH

TERMS AND CONDITIONS (DE)

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 below) shall apply to all contracts for the supply of testing, calibration and/or other services ("Services") carried out by Element Metech KDK GmbH ("Company") providing the services contemplated therein 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 Company's confirmation of order or implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing.
- 1.3 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 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 prior to the conclusion of a Contract (as defined below). A Quotation given to the Company shall be an offer to contract with a person and no contract shall come into existence until the Company has accepted the offer.
- 1.5 The Quotation shall constitute the offer to purchase the Services specified in the Quotation on the terms and conditions set out therein. The Customer shall be deemed to have accepted the offer by placing an order with the Company or by issuing an order to a third party (if the order is issued to a third party, the order shall be deemed to be an order for the supply of the Services under these Terms and Conditions) or by purchasing the Services from the Company. The order shall be deemed to be an order for the supply of the Services under these Terms and Conditions.
- 1.6 No contract shall be deemed to have been entered into by the Company on behalf of an individual or a company unless the order is accompanied by a purchase order or a purchase order form (p

sub-condition 3.9.1, the Customer will pay to the Company, on demand, a sum equivalent to 50% of the total annual remuneration package paid by the Company to the individual prior to his or her departure. If the Company asserts claims for damages against the Customer due to a breach of the obligation under the preceding sentence, the amount determined shall be credited against the amount of any claim for damages by Company.

4. Services

- 4.1 Subject to the remaining sub-conditions of this condition 4, the Company will complete the Services in a satisfactory and workmanlike manner, consistent with industry standards. Unless otherwise agreed between the Company and the Customer, the agreed standard for calibration services provided by the Company shall be DIN EN ISO/IEC 17025. The Customer expressly acknowledges and agrees that the Company gives no warranty that any result or objective can be achieved through the Services and that, where results are based on smaller scale tests and theoretical studies, results may require careful validation in order to be extrapolated to a production scale.
- 4.2 The Company will use its reasonable endeavours to complete Services and provide written information, results, technical reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (the "**Report**") or certificate thereon to the Customer by any date reasonably requested in writing by the Customer. The Company's maximum liability to the Customer for any delay in the performance of any obligation under the Contract shall not exceed 5% of the Consideration, provided that the delay is due to a slight negligence of the Company.
- 4.3 The Company's performance obligations shall be subject to any obligations it may have to comply with any law or other regulation binding on it which may be in force from time to time.
- 4.4 No employee, agent or other person is authorised to give any warranty or make any representation on behalf of the Company in relation to the Contract, or to assume for the Company any other liability in connection with the Services, unless such warranty, representation or assumption of liability is given to the Customer in accordance with sub-condition 2.1.
- 4.5 In relation to radiography reports and film delivered or interpreted as part of the performance of the Services, the Customer shall notify the Company, within fourteen (14) days from date of issue of such radiography reports and film, of any Customer or third party dispute concerning either the radiographic quality or interpretation of results. If the Customer does not so notify the Company within this fourteen (14) day period, the Customer will be deemed to have accepted the radiography reports and film, together with any interpretation of these, provided by the Company.
- 4.6 The Customer warrants to the Company the completeness and accuracy of all documents and information supplied to the Company for the purposes of the Company fulfilling the Services, both at the time of supply and subsequently.
- 4.7 Reports are issued on the basis of information known to the Company at the time that the Services are carried out. Although the Company will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Customer, its staff and on the information submitted to the Company. All Reports are prepared on the basis that:
- 4.7.1 there is no responsibility to any person or body other than the Customer;
- 4.7.2 they are not produced for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
- 4.7.3 the Report is determined solely by the professional analysis undertaken by the Company's staff on each individual Contract and any forecasts by the Company of the results is an estimate only;
- 4.7.4 the Company is entitled to be paid the Consideration irrespective of the results or conclusions reached in the Report;
- 4.7.5 the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
- 4.7.6 the results are final and approved by the Company. The Company shall be under no liability where the Customer has acted on preliminary, unapproved results or advice.

5. Customers' Property

- 5.1 The Customer is obliged to cooperate to the extent necessary for the proper completion of the Contract, including it shall provide a unique purchase order number, reference or authorization, about each Sample and/or Service requirement in order to assist in achieving an efficient service. If a Customer provides the Company with detailed instructions in writing as to the treatment and handling of particular items of its property, the Company will use its reasonable endeavours to comply with such instructions. In particular, the Customer shall provide the Company, without being requested to do so, with all documents and information

necessary for the execution of the Contract in full and in sufficient time to allow the Company reasonable processing time. The same applies to the provision of information about all processes and circumstances that may be of importance for the execution of the agreed order. The Customer is obliged to take note of all written and oral communications from the Company and to consult with the Company in the event of any doubt. The Customer shall always provide all information and data requested by the Company completely and truthfully. The Company will assume that the facts, information, data, information and documents provided by the Customer are correct and complete. The verification of the correctness, completeness and regularity of corresponding information provided by the Customer is not part of the agreed scope of Services of the Company. Another condition only applies if this is expressly agreed.

- 5.2 The Customer shall inform the Company in writing prior to the Company carrying out any Service on a Customer site or Sample that is of a dangerous or unstable nature, as well as notify the Company of any actual or potential health & safety hazards relating to a Sample and arising from the Company's performance of the Services, and shall provide instruction on the safe visiting of the site or safe handling of the Sample. The Customer shall accept full responsibility for appropriate safety labeling pertaining to the Sample and any equipment provided to the Company by the Customer.
- 5.3 The Customer acknowledges and expressly agrees that, subject to sub-condition 5.4 where the Contract specifies that the Services include non-destructive testing of the Sample, the performance of the Services may damage or destroy any and all Samples and any other materials or property delivered by Customers to the Company in relation to the Contract. The Company will not be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from destruction or loss of the Customer's property, subject to the provisions contained in condition 8.
- 5.4 When testing, analysis or other services are carried out, the Company shall not be liable in respect of any costs or losses resulting from damage to or destruction of any property belonging to the Customer, subject to the provisions stated in condition 8. In case the Company faces liability for damage to or destruction of the Customer's property, the liability shall be limited to the lesser of: (i) the value of Customer's property or (ii) the cost of the Services performed on the damaged property pursuant to the Contract, unless the Customer provides proof that it has suffered a higher loss.
- #### **6. Re-Delivery**
- 6.1 The Company will at the Customer's reasonable written request, deliver the Customer's property (other than that which is destroyed as part of the Services) back to the Customer after performing Services relating to that property. The Company may use any method of delivery that it reasonably decides and will do so as the agent of the Customer and will not have any liability in respect of any such item so delivered, subject to the provisions stated in condition 8. The provisions contained in condition 8 shall apply accordingly in respect of any persons whom the Company may have engaged in connection with the delivery of property to the Customer unless the parties to the Contract expressly agree otherwise.
- 6.2

8.3 In the event of liability for simple negligence, the Company's liability to pay compensation for financial loss shall be limited to an amount of EUR 6,000.00 per case of damage, even if a breach of material contractual

For the purposes of this condition

set out in this condition 20, provided that the Data Processor notifies the Data Controller of the identity of such sub-processors and any change to them; and

- 20.4.8 cease Processing the Personal Data within ninety (90) days upon the termination or expiry of this Contract or, if sooner, the Service to which it relates and as soon as possible thereafter (at the Data Controller's option), either return, or securely wipe from its systems, the Personal Data and any copies of it or of the information it contains, other than to the extent that the Data Processor is required to retain the Personal Data due to a legal or regulatory requirement, or by a requirement of an accreditation body.
- 20.5 The Data Processor shall make available to the Data Controller such further information and (as applicable) allow for and contribute to any audit or review exercise, conducted by the Data Controller or an auditor mandated by the Data Controller to provide assurance that the Data Processor is in compliance with the obligations set out in this condition 20, provided always that this requirement shall not oblige the Data Processor to provide or permit access to information concerning: (i) the Data Processor's internal pricing information; (ii) information relating to other clients of the Data Processor; (iii) any Data Processor non-public external reports; or (iv) any internal reports prepared by the Data Processor's internal audit or compliance functions. The Data Processor must immediately inform the Data Controller if, in its opinion, an instruction provided by the Data Controller pursuant to this Contract infringes the GDPR or the BDSG.

21. Sub-contracting

- 21.1 Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Company shall be entitled, in its absolute discretion, to sub-contract the whole of or any part of the Service.
- 21.2 The Company may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Contract.
- 21.3 The Contract is personal to the Customer which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

22. Confidentiality

For the purposes of this condition 22, "**Confidential Information**" shall