

# ELEMENT MATERIALS TECHNOLOGY

## TERMS AND CONDITIONS (US)

### 1. Formation of Contract

- 1.1 ~~V@•^Áñ{ •Áæ ä& } äää }•Á~~ **Terms and Conditions** ~~Äj \*^c@!Á ä@~~  
any ~~~ [ cää ] ä [ ] [ •äÉ•ä ääÉ!Á^Á~ [ c^Á~~ **Quotation** ~~Ä ] [ çää^ä~~  
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 ~~ÇServices-D~~ carried out by Element Materials Technology  
Oakland . Concord Inc. ~~ÇCompany-DÄ ] [ çää \*Á c@~~ services  
contemplated therein to the customer ~~ÇCustomer-D~~
- 1.2 These Terms and Conditions shall supersede and override any terms or  
conditions contained in or referred to in the Custom~~^!q Ä ~ !&@^Ä !ä^!~~  
or acceptance of a quotation or specification and shall prevail over any  
inconsistent terms or conditions contained or referred to in the  
Ö [ { ] ä ~ q Ä } -ä [ ää ] Ä -Ä !ä^!Éor implied by law (unless the law in  
question cannot be excluded), trade, custom, practice or course of  
ä^ää \*ÉÖ Ä @æ^Ä d [ ä ~ &^ä^Ä Ä@Ä!{ •Äincluding-Äinclude-Äin  
**particular** ~~Ä !Ä ^ Ä ä ääÄc ] !••ä } Ä @Ä/Ä^Ä } •d^~^Ää ÄÄ ~ dää^~~  
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 ~~V@ÄÖ•ç { ^!q Ä ] ~ !&@^Ä !ä^!Ä !Äc@ÄÖ•ç { ^!q Äää^ ] çä &^Ä Äæ~~  
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  
and Conditions will be established (such contract, together with these  
Terms and Conditions, the ~~%Contract-D~~
- 1.5 No acceptance or acknowledgement, even if in writing and signed by the  
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company of that party, and any subsidiary of a holding company of that party.

3.7



- 8.8.1 death or personal injury to the extent resulting from the negligence; or
- 8.8.2 liability incurred by the Customer to the extent resulting from fraud or fraudulent misrepresentation by the Company; or
- 8.8.3 any other matter which may not be limited or excluded by law to the extent arising out of the errors or omissions of Company.

8.9 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 and related rights, trademarks, 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 specified in the Contract.

9.3 Ownership and copyright 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 license to use the Report (including the right to sub-license), 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), trademark(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 the Service is terminated, the Customer shall not be entitled to use the Report or any other material produced by the Company for any purpose.~~

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 discretion, be prepared to provide testimony and/or documentation, or serve as the expert witness on behalf of the Customer.

12.4 This condition 12 shall survive termination of the Contract.

### 13. Termination

For the purposes of this condition 13, ~~Sanctions Rules~~ shall mean any



22.2.4 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Recipient.

22.3 In the event of an information request being made to a Recipient pursuant to any applicable freedom of information laws in respect of any Confidential Information then the Recipient shall notify the Disclosing Party and shall not disclose any information until an analysis has been made as to whether the information requested is capable of benefiting from an exemption from disclosure.

22.4 The obligations of the parties under this condition 22 shall continue to apply without limit of time.

### 23. Export Control License

For the purposes of this condition 23, ~~Export Control License~~ mean any public or governmental license, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by any United States or foreign authority which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, or re-export products and/or provision of services, and/or transfer of technology and/or Intellectual Property Rights including without limitation, the U.S. Export Administration Regulations, and the U.S. International Traffic in Arms Regulations.

23.1 The Company and the Customer shall be wholly or partly, be subject to Export Control Licenses. If any such Export Control License requires signed end user certificates or any other United States or foreign governmental or court approvals or consents, the parties agree to assist each other in completing the relevant end user certificates or other such approvals or consents and the Customer undertakes to conform to and apply the terms of such, end user certificates, Export Control Licenses or restrictions.

23.2 The Customer represents and warrants that it shall inform the Company in writing, prior to the Company carrying out