

# ELEMENT MATERIALS TECHNOLOGY LIFE SCIENCES

## TERMS AND CONDITIONS (US)

### 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 Element Materials Technology Midland Inc. ("**Company**") shall apply to all contracts for the supply of **Services** (as

defined in the Quotation) and any materials, item, product or compound supplied by the Company to form part of the Services. 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. 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.

1.3 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 parties designated by the Client as set forth in the Quotation;

"**Sample**" means (a) with respect to Testing Services not related to Manufacturing by the Company, any materials, item, product or compound supplied by Client to form part of the Services;





limitation any warranties of merchantability or fitness for a particular purpose, quality, safety, non-toxicity, efficacy, absence of errors, accuracy, completeness of results, the prospects or likelihood of success of the Clinical Trial, or the validity, scope, or non-infringement of any Intellectual Property Rights involved in the development of a drug product.

any medium or format, whether now known or hereafter discovered; (b) to use, make, have made, sell, offer to sell, import and otherwise exploit any product or service based on, embodying, incorporating or derived from the Deliverable; and (c) to exercise any and all other present or future rights in the Deliverable.

- 10.4 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 Client.
- 10.5 When certification is granted the Company shall award, upon Client's written request, a license to the Client 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.
- 10.6 The Client shall indemnify the Company against all losses to which the Company may become liable as a result of a claim that (i) the Manufacturing or use of any Clinical Trial Material, or (ii) any data, equipment or other materials supplied by the Client for the performance of the Services, involves the infringement of any Intellectual Property Rights of any third party.
- 10.7 Except for the Client's limited rights to use the Deliverables as set forth in Article 11, 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 to the other party's name in connection with any publication and may not 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.

#### **11. Use of Deliverables and Work Product**

- 11.1 The Deliverables and Work Product constitute confidential information that is to be protected and shall be used solely to:
- 11.1.1 assist the Client in completing its internal requirements and the Company in performing Services for the Client;
  - 11.1.2 comply with the Client's client and other third party requirements for the delivery and use of the data recited in the Deliverable and/or Work Product;
  - 11.1.3 present or respond on a claim in a court of law against Company or Client brought by a third-party or between the parties (provided that, this sub-condition does not apply where a claim is the purpose for which Client ordered the Deliverable and/or Work Product and Company agreed to provide the Services with knowledge of the claim at the time ordered); or
  - 11.1.4 present or respond as required by law or any regulatory body.
- 11.2 The Client hereby undertakes that it shall not:
- 11.2.1 except as set out in Section 11.1, disclose a Deliverable or

- 14.2.2 if the Client fails to make payment of the Consideration within the specified time;
- 14.2.3 the Client (a) makes any voluntary arrangement with a general assignment for the benefit of its creditors; (b) becomes insolvent, ceases or suspends payment of any of its debts, or becomes unable to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; or (d) is dissolved or liquidated or takes any corporate action for such purpose;
- 14.2.4 an encumbrancer takes possession, or a receiver, trustee, or administrator or similar agent is appointed, over any of the property or assets of the Client;
- 14.2.5 the Client ceases, or threatens to cease, to carry on business;
- 14.2.6 the Company reasonably believes that any of the events mentioned at sub-conditions 14.2.1 to 14.2.5 above is about to occur in relation to the Client and notifies the Client accordingly; and
- 14.2.7 if the Company reasonably believes that providing the Services or dealing with the Client would be in breach of Sanctions Rules, the Client fails to satisfy due diligence requests made by the Company in connection with compliance with Sanctions Rules or other relevant laws or regulations or the Client does anything which is in breach of, or would cause the Company to be in breach of, Sanctions Rules.
- 14.3 On termination of the Contract for any reason the Client shall immediately pay to the Company all indebtedness to the Company with applicable interest.
- 14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 14.5 Sections and sub-conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 15. Force Majeure

The parties shall not be liable for delay in performing, or failure to perform, any obligation under the Contract if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic

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