

# ELEMENT MATERIALS TECHNOLOGY

## TERMS AND CONDITIONS (US)

### 1. Formation of Contract

1.1 These terms and **Terms and Conditions**  
any quotation, proposal, estimate, **Quotation**  
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** Element Materials Technology  
Broken Arrow LLC **Company**  
therein to the **Customer**

1.2 These Terms and Conditions shall supersede and override any terms or con  
or acceptance of a quotation or specification and shall prevail over any  
inconsistent terms or conditions contained or referred to in the  
w (unless the law in  
question cannot be excluded), trade, custom, practice or course of  
**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 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



- 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 unless the Customer notifies the Company in writing before delivery to the Company and the property itself delivered to the Company is clearly  
tice is given and the

5.4.1

5.4.2 the cost of the Services performed on the damaged or destroyed property pursuant to the Contract.

## **6. Re-Delivery**

6.1

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. The Company may at its discretion instruct any person delivering such property to the Customer to invoice that Customer directly in respect of that delivery and the Customer shall make any and all claims for property damaged in transit directly and solely against such delivery company or other person.

- 6.2 Unless specifically instructed to the contrary in writing by the Customer, property after completion of the Services provided that the length of time destroyed will be at the absolute discretion of the Company. The Company reserves the right to invoice the Customer for any costs of disposal. Where property of the Customer is, in the sole opinion of the Company, too bulky or too unstable to allow storage time of more than one month, it will be at the absolute discretion of the Company as to the length of time such property is kept before being destroyed.

## **7. Title & Security**

all risk of loss or damage to such property (except for loss or damage caused by the Company and for which and to the extent that the Company accepts liability under these Terms and Conditions) shall remain with the Customer at all times, who shall be responsible for effecting and maintaining its own insurance coverage thereof, it being hereby acknowledged by the Customer that the charges of the Company do not include insurance. The Company may retain all property delivered to it until all sums due and owing to the Company by the Customer have been paid.

## **8. Liability and Indemnity**

- 8.1 This condition 8 sets out the entire financial liability of the Company, its employees, agents and sub-contractors to the Customer in respect of any breach of the Contract, any use made of Samples or any part of them on which Services are carried out, and any representation, warranty, statement, or tortious act or omission (including negligence or

8.8.1 death or personal injury to the extent resulting from the

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 expressly agreed as part of 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 written request, a license 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 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.

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.

## 10. Use of Reports

10.1 The Reports constitute confidential information

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** applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licenses, orders, or requirements, in force from time to time, including without limit those of the United States, the European Union, the United Kingdom, and the United Nations.

13.1 If the Customer becomes subject to any of the events listed in sub-condition 13.2, the Company may terminate the Contract with immediate effect by giving written notice to the Customer.

13.2 For the purposes of sub-condition 13.1



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 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 any Service, of any applicable import or export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/imported to or from a country that is banned from such transaction.

23.3 The Company shall make reasonable efforts to obtain the necessary Export Control Licenses, but the parties acknowledge that the issuance of Export Control Licenses is at the sole discretion of the relevant authorities. If any necessary Export Control License is delayed, denied or revoked, the Company shall notify the Customer thereof in writing as soon as reasonably practicable, and the Company shall be entitled to a corresponding extension of the time for provision of the Services, and, in case any necessary Export Control License denial rev9nte for(u)4(a)19(n)4(c)-6(e)19( )JTJETqQ28.131 0 0 1 39.6of 2ort Cont a 39.6 545.35 Tm[w]21(h24(m