

PREFERRED TESTING LABS, INC.
GENERAL TERMS AND CONDITIONS
("Terms and Conditions")

1) CONTRACT FORMATION AND ACCEPTANCE:

(a) The "Seller" in this contract for the purchase and sale of goods and services, is Element Materials Technology Anaheim, aka Preferred Testing Labs, Inc. The "Buyer" is named on the Seller's offer to sell (hereinafter, the "Quotation") or the buyer's purchase order (hereinafter, the "PO"). Buyer and Seller are collectively herein the "Parties" or separately the "Party". Buyer's acceptance of the Quotation or creates a "Contract" and is evidenced by (1) a signed PO referencing the Seller's Quotation number and these Terms and Conditions, (2) a return to Seller of a copy of the Quotation signed by Buyer, (3) Seller's acknowledgement of the Buyer's PO, or (4) payment, and the Seller's acknowledgment of the goods and/or services described in the PO, hereafter collectively forming an "Order". Notwithstanding the foregoing, the Buyer and Seller may have executed certain separate Non-disclosure Agreements that also form a part of the contract. Any ambiguity or inconsistency in these documents shall be resolved in the following order of precedence: (1) these Terms and Conditions, (2) the Quotation, (3) the Seller accepted Order, (4) any separate Non-disclosure Agreement. All other prior agreements are hereby made null and void.

(b) Additional or differing terms or conditions proposed by Buyer or included in Buyer's PO or attachments thereto are hereby objected to

ACCEPTANCE, WITHOUT ADDITIONS OR
CHANGES, OF THE PRICES, TERMS AND CONDITIONS CONTAINED IN SELLER'S QUOTATION, UNLESS SELLER HAS EXPLICITLY AGREED
TO OTHER PRICES, TERMS OR CONDITIONS IN SIGNED WRITING. NO OTHER DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS
SHALL APPLY.

(c) Seller Quotations are offered for acceptance within sixty (60

reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (the "Report") or certificate thereon to the Buyer by any date reasonably requested in writing by the Buyer, but the Seller shall not be liable to the Buyer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Buyer by reason of such delay.

(c)

5) TOOLING AND SETUPS:

Where applicable, tooling and setups quoted by Seller reflect costs and special designs to adapt or modify Seller's proprietary test equipment or fixtures or Buyer's Property, and neither the Seller's tooling nor the Seller's setups will be released from the Seller's facility. All right, title and interest to Seller's fixtures, special tooling drawings, design and related data is, and shall remain, the property of the Seller, except where the fixtures, tooling, drawings, design and related data are specifically identified as deliverable items in the accepted Order. Seller may incorporate proprietary information, intellectual property or trade secrets of the Seller in such deliverable items or data. Where such information is incorporated into deliverable items, Buyer shall protect such items or data in accordance with the confidentiality provisions of these terms and conditions rendering the same degree of care as Buyer uses to protect its own confidential information, but no less than a reasonable degree of care.

6) SERVICES:

(a) Reports are issued on the basis of information known to the Seller at the time that the Services are carried out. Although the Seller will use all commercially reasonable efforts to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Buyer, including its staff, and on the information submitted to the Seller. All Reports are prepared on the basis that:

- (i) there is no responsibility to any person or body other than the Buyer;
- (ii)

(b) In the event that the Seller is required by a Party other than the Buyer to present the results or findings of Services carried out by the Seller for the Buyer in any legal proceedings relating to the Buyer, the Buyer shall pay all costs and fees arising from any services which the Seller is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing and reasonable travel and out-of-pocket expenses. The Buyer shall pay all such costs, whether or not the Buyer has paid all outstanding Consideration under the Contract and whether or not the Seller has closed the Buyer's file in respect of the matter.

(c) 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 Seller in writing before the Services are carried out. If that fact is not disclosed to the Seller at that stage, the Seller may not, in its absolute discretion, be prepared to provide testimony and/or documentation, or serve as the expert witness on behalf of the Buyer.

(c) This Section 8 shall survive termination of the Contract.

9) CHANGE ORDERS, INTERRUPTIONS, CANCELLATIONS AND TERMINATIONS:

(a) Change Orders. Seller is not obligated to perform any additional services not specified in the accepted Order, including, but not limited to

10) LIMITATIONS OF LIABILITY AND INDEMNITIES:

(a) General: IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT, OVERTIME, BUSINESS INTERRUPTION, SPOILAGE OF GOODS, CLAIMS OF CUSTOMERS OR OTHER ECONOMIC HARM, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY SHALL BEAR ALL LIABILITY AND RESPONSIBILITY FOR THE ACTS, ERRORS OR OMISSIONS OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS COMMITTED WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. EACH PARTY SHALL MAINTAIN INSURANCE IN REASONABLE AND RESPONSIBLE AMOUNTS FOR SUCH LIABILITIES, NEITHER PARTY SHALL BE LIABLE FOR THE ACTS, ERRORS OR OMISSIONS OF THE OTHER PARTY'S OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS WHETHER OR NOT CARRIED OUT WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by said Party's negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited. Seller is neither an insurer nor a guarantor and disclaims all liability in such capacity. Buyer is not a co-insured under Seller's insurance, unless specifically so stated in the accepted Order. THIS SUBSECTION 9(a) SHALL APPLY REGARDLESS OF THE DATE OF THE ORDER.

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LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) Seller's Liability. THE SELLER'S LIABILITY TO THE BUYER FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF STATUTORY DUTY, MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE GREATER OF (i) US\$5,000 OR (ii) THE CONSIDERATION FOR THE SERVICES PAYABLE EACH CALENDAR YEAR UNDER THE CONTRACT THAT ARE SUBJECT TO THE CLAIM. UNDER NO CIRCUMSTANCE SHALL SELLER'S LIABILITY EVER EXCEED ITS PROPORTIONATE SHARE WHERE MORE THAN ONE PARTY HAS LIABILITY. Save in the case of fraud or fraudulent concealment by the Seller, the Seller shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless: (i) the Buyer notifies the Seller in detail and in writing of the alleged basis for the claim within two (2) months of the Buyer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and (ii) the Seller is permitted to inspect any and all property with respect to which the Services are claimed to have been defective or to which Buyer's claim otherwise high

16) DISPUTES:

(a) Any dispute between the Parties relating to the contract between Buyer and Seller that cannot be resolved with reasonable promptness shall be referred to each Party's senior manager in an effort to obtain prompt resolution. Neither Party shall commence any action against the other until the expiration of fifteen (15) business days from the date of referral to such senior managers, provided, however, this shall not preclude a Party from instituting an action seeking injunctive relief to prevent irreparable damage to such Party. Seller will not proceed with any work in dispute in accordance with Seller's Quality Management System and FAR 52.243-1 Alt III.

(b) The Contract shall be deemed executed and to be performed in the state where the Services are performed ("Jurisdictional State"). Each Party irrevocably agrees that any legal suit, action or proceeding arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) shall be instituted in the state or federal courts located in the Jurisdictional State, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts of the Jurisdictional State and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) All disputes under this contract (including any question regarding its existence, validity and termination) which are not disposed of by mutual agreement following good faith negotiations within a period of thirty (30) days from the notification of a dispute shall be finally resolved at Seller's sole discretion either by submitting the claim to (i) the district court of the Jurisdictional State, or (ii) binding arbitration before a mutually acceptable arbitrator in the Jurisdictional State, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(d) If any legal proceeding is instituted to enforce or interpret the provisions of the Contract, the prevailing Party(s) shall be entitled to recover its, his, her or their costs, including reasonable attorney fees and expert witness fees, from the non-prevailing Party(s) in the proceeding. For purposes of this subsection 16(d), reasonable legal fees include the reasonable fees, charges, expenses of counsel, whether in house or outside counsel, whether incurred at the trial court level, appeal or in bankruptcy, administrative or probate proceedings or otherwise and court costs.

(e) Buyer acknowledges that it has read these terms and conditions and has had the opportunity to clarify these terms and conditions with Seller and is satisfied that it reflects the intent of the Parties. Accordingly, the rule of contra proferentem shall not apply to the contract formed between Buyer and Seller, and Buyer agrees and acknowledges that any ambiguity, inconsistency, or conflict that remains in the contract between Buyer and Seller after its execution by both Parties shall not be construed for or against either Party.

17) NON-SOLICITATION:

(a) The Buyer undertakes that during the provision of the Services and for 6 months following completion thereof, the

