

# ELEMENT MATERIALS TECHNOLOGY

## TERMS AND CONDITIONS (US)

### 1. Formation of Contract

- 1.1 These terms and **Terms and Conditions**  
any quotation, proposal, estimate, **Quotation**

company of that party, and any subsidiary of a holding company of that party.

3.7 The Customer undertakes that during the provision of the Services and for 6 months following completion thereof, the Customer shall not

3.7.1 solicit or entice away (or assist anyone else in soliciting or the Customer has had dealings in connection with the Contract and/or the provision of the Services during the 12 months purchase order or the date of the Quotation); or

3.7.2 employ (directly or through a third party) any person as referred to in sub-condition 3.7.1 or engage a person in any way to provide services to the Customer.

This undertaking shall not apply in respect of any member of the Company who directly or indirectly by the Customer responds to an advertisement placed by

In the event of a breach of this undertaking, which leads to the departure of any person as referred to in sub-condition 3.7.1, the Customer will pay to the Company, on demand, as liquidated damages and not as a penalty (the parties acknowledging that actual damages would be impracticable or extremely difficult to calculate with reasonable certainty), a sum equivalent to 50% of the total annual remuneration package paid by the Company to the individual prior to his or her departure. The Customer acknowledges that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to the Company.

#### 4. Services

4.1 Subject to the remaining sub-conditions of this condition 4, the Company warrants that it will complete the Services in a satisfactory and workmanlike manner, consistent with industry standards. 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 commercially reasonable efforts to complete Services and provide written information, results, technical reports, certificates, test or inspection records, drawings, recommendations,

##### **Report**

thereon to the Customer by any date reasonably requested in writing by the Customer, but the Company shall not be liable to the Customer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Customer by reason of such delay.

4.3 be subject to any obligation 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 represents and 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, including its staff, and on the information submitted to the Company. All Reports are prepared on the basis that:

- 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

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

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 m 0 1 891f1 0 0 1 18 612.58 Tm[1)4(3)4(8--184(s)7(u)4(3)4((a)4(r)5(t)-5 1 39.6 633.82 Tm[E)-4(u)4

local, international or other applicable laws, rules or regulations governing the use and protection of data..

20.1 Within this condition 20 **Process/Processing/Processed Data Controller Data Processor Data Subject Personal Data Personal Data Breach**

Protection Laws; provided that the US Data Protection Laws shall be controlling should there be a conflict between any Data Protection Laws and thereafter the GDPR shall have priority.

20.2 The Customer agrees not to provide or otherwise make available Personal Data to the Company, other than business contact information (for example, business, telephone number, job title, and email address), unless otherwise required for the provision of the Services, in which case

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 notifyd, the9.levan sh(in )9futhorit an in6(e)4cenanev(II)11( )7(v)7((I)4(a)4(II)4( )-154(m)-1(t)-5(e)4(d)-5(o)4()6(u)4(s)7s)-6(u)