

# ELEMENT MATERIALS TECHNOLOGY

## 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 the Company (as defined in this sub-condition) shall apply to all contracts for the supply of testing, calibration and/or other services ("**Services**") carried out by Element Materials Technology Kokomo, a division of Trialon Corporation ("**Company**") providing the services contemplated therein to the customer ("**Customer**").

1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to in the Customer's purchase order or acceptance of a quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in 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 person and no contract shall come into existence except in accordance with sub-condition 1.4.

1.4 The Customer's purchase order or the Customer'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 and Conditions will be established (such contract, together with these Terms and Conditions, the "**Contract**").

1.5 No acceptance or acknowledgement, even if in writing and signed by the Company, of the Customer's purchase order or any other document pertaining to the Services shall constitute acceptance of any provision of the Customer's purchase order or any other document that conflicts with or adds to these Terms and Conditions unless the Company specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 2.1.

1.6 The delivery to the Company by the Customer of any item for testing or calibration by the Company (a "**Sample**") or the delivery of any request by the Customer to the Company for the provision of any similar services shall, upon acceptance of that Sample or request by the Company, constitute an 'offer' (as referred to in sub-condition 1.4). If the Company begins such testing, calibration or similar services on that Sample, the offer shall be deemed to have been accepted by the Company and a Contract shall be formed. These Terms and Conditions shall apply to that Contract.

### 2. Variation including Cancellation, Postponement and Amendment

2.1 These Terms and Conditions may not be varied or waived by either party unless the variation or waiver is in writing and is signed by an officer or duly authorised signatory of the Company. The variation or waiver must set out the condition(s) or sub-condition(s) to be varied or waived and the detail of each such variation or waiver.

2.2 The Customer may cancel, postpone or amend any order (in whole or in part) at any time, provided that the Customer shall pay to the Company the full amount of the Consideration (as defined in sub-condition 3.1) relating to such order plus all Costs (as defined in sub-condition 3.1) relating to such order incurred by the Company prior to the date of the cancellation, postponement or amendment plus any other losses, expenses and costs incurred by the Company as a result of the cancellation, postponement or amendment.

2.3 The Company reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Contract have materially changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested, for example, producing written descriptions of detailed procedures undertaken as part of the Services. For the avoidance of doubt, approval of such additional requests shall remain at the Company's discretion.

### 3. Prices & Payment

3.1 The Customer shall pay the Company the charges set out in the Quotation, if applicable, or as otherwise contemplated for the provision of the Services ("**Consideration**") and shall pay the Company on demand for any expenses incurred in the provision of 242(t)-5(h)4(e)4()

company of that party, and





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 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, the relevant events are:

13.2.1 if the Customer commits a breach of any terms of the Contract or any other contract with the Company which is incapable of remedy or, if capable of remedy, has not been remedied by the Customer in accordance with a written notice from the Company requiring remedy within the period specified in the said notice;

13.2.2 if the Customer fails to make payment of the Consideration within the specified time;

13.2.3 the Customer (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

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