

ELEMENT MATERIALS TECHNOLOGY

TERMS AND CONDITIONS (US)

1. Formation of Contract

- 1.1 These terms and Conditions shall apply to any quotation, proposal, estimate, or other offer 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 provided by the Company, a division of Element Materials Technology Minneapolis - Minnetonka, Inc. to the Customer.
- 1.2 These Terms and Conditions shall supersede and override any terms or conditions or acceptance of a quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in the quotation or specification (including but not limited to trade, custom, practice or course of dealing) 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 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, shall constitute the Contract).
- 1.5 No acceptance or acknowledgement, even if in writing and signed by the Customer, shall constitute acceptance of any provision of 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 shall constitute an offer by the Customer to the Company for the provision of any similar services shall, upon acceptance of that Sample or request by the Company, begin 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

- 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 marked with the name of the Customer and the name of the Company. This condition shall apply regardless of whether such losses or damages were foreseeable and whether or not the Company has been advised of the possibility of such losses or damages, and notwithstanding the failure of any agreed or other terms, conditions, warranties, representations or undertakings or pure economic loss.
- 5.4.1 The cost of the Services performed on the damaged or destroyed property pursuant to the Contract.
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6. Re-Delivery
- 6.1 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, 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
- Title to the property 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 breach of statutory duty) arising under or in connection with the Contract.
- 8.2 Other than as expressly set out herein and as specifically warranted in writing to the Customer by an officer or duly authorised signatory of the Company in accordance with sub-condition 2.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, expressly disclaimed and excluded from the Contract.
- 8.3 SUBJECT TO THE REMAINING SUB-CONDITIONS OF THIS CONDITION 8, THE COMPANY SHALL NOT BE LIABLE, WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION OR OTHERWISE FOR:
- 8.3.1 LOSS OF PROFITS; LOSS OF BUSINESS; LOSS OF REVENUE; LOSS OF MARKETS; LOSS OR DAMAGE INCURRED AS A RESULT OF A THIRD PARTY CLAIM; DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF CONTRACT; LOSS OF USE; LOSS OR CORRUPTION OF DATA OR INFORMATION; EX GRATIA PAYMENTS; OR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES, FINES, REWARDS, OR EXPENSES.

