

# ELEMENT MATERIALS TECHNOLOGY

## TERMS AND CONDITIONS (US)

### 1. Formation of Contract



- 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.
- 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 Company shall be liable for the cost of re-delivery of property (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, 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.







