

# Element Materials Technology Herne GmbH

## Purchasing Terms and Conditions

### 1 GENERAL

- a. In these Conditions "Buyer" means Element Materials Technology Herne GmbH (a company registered in Germany under HRB 9322), a member of the Element Materials Technology Group; "Supplier" means the supplier indicated on the Order; "Goods" means the goods or other materials stated on the Order and any necessary ancillary goods or materials; "Services" means the services stated on the Order and any necessary ancillary services; "Contract" means the contract (incorporating these Conditions and the Order) made between the Buyer and the Supplier for the sale and purchase of the Goods and/or the Services; "Order" means the Buyer's order for the Goods and/or the Services from the Supplier; "Supplier's Warranties" means those warranties as set out in clauses 5a, 5b and 5c.
- b. These Purchasing Terms and Conditions shall not apply to contracts with consumers.
- c. The Order constitutes an offer by the Buyer to purchase Goods and/or Services from the Supplier in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of:
  - i. the Supplier issuing written acceptance of the Order; or
  - ii. any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence.
- d. These Conditions and the Order contain all the provisions which the parties have agreed in relation to the subject matter of the Contract and supersede any prior written or oral agreements, representations, proposal documentation or understandings between the parties (including any terms or conditions which the Supplier purports to apply under any brochure, price list, acknowledgement of order or similar document). Deviating or supplementary Conditions by the Supplier require the Buyer's written confirmation for being valid. These Conditions shall not apply in case of and so long as the parties enter into a written individual agreement. These Conditions do not affect the Buyer's statutory and other legal rights.
- e. The headings in these Conditions are for convenience only and shall not affect their interpretation. The word "including" will be construed so that it does not limit the general effect of the words which precede it and so that any examples that are given are not to be exclusive or limiting examples of the matters in question.

### 2 DELIVERY OF GOODS/PROVISION OF SERVICES

- a. The Supplier shall deliver the Goods and/or complete the provision of the Services by the delivery or completion date(s) stated on the Order. If no dates are so specified, delivery of the Goods and/or completion of the Services will be within 28 days of the date of the Order or by such later date as may be agreed by the Buyer and the Supplier in writing. Time for delivery of the Goods and/or completion of the Services shall be of the essence of the Contract.
- b. Delivery of the Goods and provision of the Services to the Buyer shall be made at the place(s) specified in the Order (or, if none specified, at the Buyer's premises from which the Order is despatched) and by the method(s) specified on the Order (or, if none specified, using such method as accords with best accepted industry practices).
- c. The Supplier shall deliver the quantity of goods stated on the Order. The Buyer may at its discretion accept a quantity variation and pay pro-rata for the actual quantity delivered.
- d. The Goods shall be properly packed and stored during transit so as to reach their destination in an undamaged condition. All containers and other packaging shall be included in the price and non-returnable unless otherwise stated on the Order.
- e. The Supplier shall at its own cost obtain and comply with any necessary export/import licences, permits or consents (including work permits or consents) for the supply and delivery of the Goods or provision of the Services.
- f. The Buyer or its representatives shall have the right to inspect and test the Goods and inspect the provision of the Services, and the Supplier irrevocably grants the Buyer the right to enter its premises for these purposes. If as a result of such inspection or testing the Buyer is not satisfied that the Goods or the Services comply with the Contract and the Buyer so informs the Supplier then the Supplier shall take all necessary steps to ensure compliance. No inspection or testing shall imply any acceptance by the Buyer.
- g. The Buyer may at any time make changes in writing relating to the Order including changes in the specification of the Goods or the method of performance of the Services, quantities, packing or time or place of delivery of the Goods or performance of the Services. If such changes result in an increasing cost of, or time required for, the delivery of the Goods and/or the performance of the Services, an equitable adjustment shall be made to the price and/or the schedule for the delivery of the Goods or the performance of the Services. Any claim for adjustment by the Supplier must be approved by the Buyer in writing before the Supplier proceeds with such changes.
- h. The Buyer shall be entitled to cancel the Order in whole or in part by giving notice to the Supplier at any time prior to delivery of the Goods or performance of the Services, in which event the Buyer's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation including any losses of anticipated profits in the portion of the work in progress to the final Goods or Services. Thereby, the Supplier has to set of any saved expenditures and otherwise generated sales.

### 3 PRICE AND PAYMENT

- a. Unless otherwise stated on the Order the price for the Goods and/or the Services is exclusive of VAT but inclusive of all other duties, fees or taxes, cost of delivery, carriage, packing or provision to the Buyer, and shall not be subject to adjustment without the Buyer's prior written consent.
- b. If no price is stated on the Order, a price must be agreed in writing with the Buyer before the Order is acted upon by the Supplier.
- c. The Supplier's invoices shall not be paid by the Buyer unless they show: the Order number, VAT rate, amount of VAT charged and the Supplier's VAT registration number. Unless otherwise stated on the Order, payment shall be due from the Buyer thirty (30) days from the date of invoice which the Buyer receives from the Supplier. The Supplier may not invoice the Buyer until delivery of the Goods to the Buyer or completion of the Services unless otherwise stated on the Order.
- d. Payment by the Buyer shall be without prejudice to any claims or rights which the Buyer may have against the Supplier and shall not constitute any admission by the Buyer as to satisfaction of the Supplier's obligations under the Contract. The Buyer may withhold payment of any sums due under the Contract, if the Supplier fails to properly fulfil a due service and the Buyer is not obliged to make a prepayment according to the Contract.
- e. The Buyer may, by notice in writing to the Supplier, set off any or all of the monies owing by the Buyer to the Supplier for the Goods or the Services against any amount owing from the Supplier to the Buyer (without prejudice to any other remedies of the Buyer in respect of any default by the Supplier).

### 4 RISK AND TITLE

- a. Risk in and title to the Goods shall pass to the Buyer on delivery to the Buyer (or, if appropriate, on receipt of the Goods by the Buyer's carriers) provided that where the Goods are transferred to the Buyer in connection with the Services, risk and title shall pass to the Buyer on substantial incorporation into or onto the premises or the property of the Buyer or on completion of the Services (whichever is earlier).
- b. Where the Buyer supplies to the Supplier materials and/or equipment on a free issue basis for use in the manufacture of the Goods for supply to the Buyer under the Contract, such materials and/or equipment shall at all times remain in the ownership of the Buyer but shall be at the Supplier's risk from point of receipt by the Supplier. The Supplier shall only use such materials and/or equipment for the purpose of manufacturing the Goods under the Contract, shall not subject such materials and/or equipment to any charge, lien or encumbrance and shall where reasonably practical keep such materials and/or equipment separate and clearly identified as the Buyer's property.
- c. The Supplier shall hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Supplier ("Buyer's Materials") in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose of or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation.
- d. Title to all items provided to the Supplier for or in connection with the provision of the Services shall remain at all times with the Buyer and the Supplier shall not exercise, assert or purport to exercise or assert any lien of whatever nature in connection with such items and risk in them shall remain with the Supplier until completion of the Services and redelivery to the Buyer (when risk shall revert to the Buyer).

### 5 WARRANTY AND LIABILITIES

- a. In the case of the Goods the Supplier warrants to the Buyer that:
  - i. the Goods as delivered shall comply with all specifications and/or drawings supplied by the Buyer to the Supplier or, if none, with the Supplier's standard specifications and with any description or sample;
  - ii. the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), sound design, materials and workmanship and fit for any purpose held out by the Supplier or specified by the Buyer or as may be reasonably inferred from the Contract or dealings between the parties and the Supplier shall hold in custody at its own risk and treat with the highest degree of care and skill accepted within the trade all items or other materials of the Buyer (if any) provided to the Supplier for or in connection with the supply of the Goods; and
  - iii. the Goods shall comply with all applicable laws, standards and regulations (and with any collection, quantity or other requirements stated on the Order) concerning the manufacture, packaging, labelling, storage, handling and delivery of the Goods, and with all relevant Health and Safety and Environmental regulations, European and British Standards and with best accepted industry standards

- b. In the case of the Services the Supplier warrants to the Buyer according to the legal provisions of the German Civil Code that:
- i. the Services shall, on completion of their provision to the Buyer, comply with the agreed specification or, if none, with the Supplier's standard specification and with any description or demonstration and shall otherwise be the best of their kind provided in the trade and be to the Buyer's reasonable satisfaction;
  - ii. the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade and the Supplier shall hold in safe custody at its own risk and treat with the highest degree of care and skill accepted within the trade all items or other materials of the Buyer (if any) provided to the Supplier for or in connection with the provision of the Services;
  - iii. it shall use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - iv. it shall use the best quality goods, materials, standards and techniques, and ensure that the deliverables and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
  - v. the Services shall be provided in accordance with all applicable standards, regulations and/or legal requirements, all relevant European and British Standards, and best accepted industry practices; and
  - vi. in the case of the Services provided on or at premises of the Buyer, the Supplier shall comply with all relevant Buyer policies (including health and safety policies and physical, systems and information security policies) and with the Buyer's site regulations in force from time to time and with other reasonable requests of the Buyer.
- c. The Supplier warrants that it shall not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Buyer may rely or act on the Services.
- d. If the Buyer finds that the Goods and/or the Services (or any of them) fail to comply with any of the Supplier's Warranties (however slight the breach) the Buyer may, by giving notice to the Supplier:
- i. reject any of the Goods or any part thereof (including any or all of the Goods not affected by such failure to comply), and/or require the immediate refund of any monies already paid and/or cancel the Order and for the avoidance of doubt, such right shall still be available to the Buyer even if the Buyer has re-sold or otherwise dealt with the Goods;
  - ii. refuse any further delivery of any Goods or the further provision of any Services (including under another Contract);
  - iii. require the Supplier (free of charge) to make good or replace the Goods or re-perform the Services to the Buyer's satisfaction (in either case within 30 days). Any demand to make good, repair, replace or re-perform shall not prevent the Buyer rejecting the Goods and/or the Services if the Supplier fails to comply or if the making good, repair or re-performance is unsatisfactory. Any replacement Goods or re-performed Services shall comply in all respects with the Supplier's Warranties; and/or
  - iv. (by itself or through arrangements with a third party) make good, modify repair or otherwise correct the Goods or re-perform the Services at the Supplier's cost, if the Supplier was not able or did not eliminate the breach within the set adequate time limit. The Supplier shall immediately on demand reimburse the Buyer its costs and expenses of such making good, modification, repair, correction or re-performance.
- e. The Goods which are alleged not to comply with the Supplier's Warranties shall as far as practicable be preserved by the Buyer for inspection by the Supplier (provided that the Supplier inspects the Goods within 14 days of being notified of the alleged defect by the Buyer), and shall, if reasonably practicable, be returned to the Supplier at the Supplier's cost.
- f. The Supplier shall take out and maintain insurance with a reputable insurance company against any loss or damage whatsoever to the Buyer, the Buyer's employees, the Buyer's property, and any third party, whether caused by the Supplier's (or its sub-contractors') default in providing the Services or supplying the Goods or otherwise through the Supplier's (or its sub-contractors') negligence in amounts adequate to cover any such potential loss or damage that may be incurred by the Buyer (or such other amounts as may be specified on the Order). The Supplier shall provide evidence of such cover to the Buyer upon the Buyer's request.
- 6. FORCE MAJEURE**
- The Buyer has the right to defer the date of delivery or payment, cancel the Order, and/or otherwise vary the Contract if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control (including acts of God, war, fire, breakdown of plant or machinery, unavailability of fuel or power, flood, storm, tempest, explosion and national emergencies).
- 7. INTELLECTUAL PROPERTY; THIRD PARTY CLAIMS**
- a. All designs, drawings, prints, samples, specifications and other materials prepared by the Buyer for the purposes of the Contract, and any such items prepared by the Supplier for the purposes of the Contract and representing, containing or embodying proprietary designs or other intellectual property (including patents, inventions, know-how, trade secrets, registered designs, copyrights, database rights, trade marks, service marks, logos, domain names, business names, trade names and design rights) of the Buyer or prepared by the Supplier in accordance with the Buyer's commission or specification shall remain or become the Buyer's property (as the case may be) and shall be returned to the Buyer upon completion or termination of the Contract. The Supplier undertakes, on request from the Buyer and at no cost to the Buyer to execute or procure the execution of (as the case may be) such documentation, authorisation or declarations as may be reasonably required to vest full right, title and interests in the rights concerned in the Buyer.
- b. The Supplier shall not use or allow to be used in any manner not approved by the Buyer, any trade marks or trade names required by the Buyer to be applied or used by the Supplier in relation to the Goods or the Services.
- c. The Supplier shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any intellectual property rights of the Buyer and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect.
- 8. CONFIDENTIALITY**
- The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives, or information relating to the business, affairs or property of the Buyer or any of the Goods or the Services which are of a confidential nature, in the event of they are not already obvious, common or public known, and have been disclosed to the Supplier by the Buyer, its employees, agents or sub-contractors, and any other confidential information concerning the Buyer's business or its products or its services that the Supplier may obtain (including any such information referred to in clause 7a without the Buyer's prior written consent). The Supplier shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier. This clause 8 shall survive termination of the Contract.
- 9. DATA PROTECTION**
- For the purposes of this clause 9: (i) "**Data Protection Laws**" shall mean up to and including 24 May 2018 the Directive 95/46/EC as transposed into domestic legislation of each Member State of the European Economic Area and in each case as amended, replaced or superseded from time to time, and on and from 25 May 2018 the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**") and/or other applicable data protection legislation in force, including without limitation any data protection laws in Germany and including the Privacy and Electronic Communications (EC Directive) Regulations 2003; (ii) "**Process/Processing/Processed**", "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**" and "**Personal Data Breach**" shall have the same meanings as in the Data Protection Laws.
- a. The Supplier agrees not to provide or otherwise make available Personal Data to the Buyer, other than business contact information (for example, business telephone number and email address and job title or staff ID), unless otherwise required for the provision of the Services, in which case such additional Personal Data shall be specifically identified in advance by the Supplier and agreed to in writing by the Buyer.
- b. In exercising its rights and performing its obligations under the Contract, the Supplier shall at all times comply with all statutory and common law obligations in respect of Personal Data including the Data Protection Laws. To the extent that any Personal Data is processed by the Supplier, the Supplier shall: (i) not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than in accordance with the documented instructions from the Buyer (which shall unless otherwise agreed be to process Personal Data as necessary to provide the Services pursuant to the terms of this Contract and in accordance with the Data Protection Laws), unless otherwise required by a law to which the Supplier is subject, provided that in such a case the Supplier shall inform the Buyer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest; (ii) take all appropriate technical and organisational measures against unauthorised or unlawful processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data, such measures to comply with Article 32 of the GDPR and to take into account and be appropriate to the state of the art, nature, scope, context and purposes of processing and risk of harm which might result from unauthorised or unlawful processing or accidental loss, destruction or damage to Personal Data; (iii) not transfer the Personal Data to any country outside the European Economic Area without the prior written consent of the Buyer, and in any event, without a proper data transfer agreement; (iv) ensure that its employees who may have access to the Personal Data are subject to appropriate confidentiality obligations or undertakings; (v) implement appropriate organisational and technical measures to assist the Buyer in meeting its obligations in relation to Articles 33 to 36 of the GDPR taking into account the nature of processing; (vi) not authorise any sub-contractor to process the Personal Data ("**sub-processor**") other than with the prior written consent of the Buyer, which consent shall be conditional on the Supplier ensuring compliance with Articles 28(2) and 28(4) of the GDPR; and (vii) cease Processing the Personal Data within ninety (90) days upon the termination or expiry of this Contract or, if sooner, the Service to which it relates and as soon as possible thereafter (at the Buyer's option), either return, or

securely wipe from its systems, the Personal Data and any copies of it or of the information it contains, other than to the extent that, and for so long as, the Supplier is required to retain the Personal Data due to a legal or regulatory requirement.

- c. If the Buyer receives a request from a Data Subject to exercise any of its rights pursuant to Chapter III of the GDPR, the Supplier shall notify the Buyer as soon as reasonably practicable and shall implement and maintain appropriate measures and provide all such assistance as the Buyer may reasonably require to enable the Buyer to timeously comply with the subject access request.
- d. The Supplier shall notify the Buyer promptly and without undue delay (and in any event within 24 hours upon becoming aware) of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Buyer with sufficient information and in a timescale which allows the Buyer to meet any obligations to report a Personal Data Breach under the Data Protection Laws and shall take such steps as are directed by the Buyer (acting reasonably) to assist in the investigation, mitigation and remediation of such Personal Data Breach.
- e. The Supplier shall make available to the Buyer such further information and (as applicable) allow for and contribute to any audit or review exercise, conducted by the Buyer or an auditor mandated by the Buyer to provide assurance that the Supplier is in compliance with the obligations set out in this clause 9, provided always that this requirement shall not oblige the Supplier to provide or permit access to information concerning: (i) the Supplier's internal pricing information; or (ii) information relating to other clients of the Supplier (save where mandated or required by a supervisory data protection authority). The Supplier must immediately inform the Buyer if, in its opinion, an instruction provided by the Buyer pursuant to this Contract infringes the GDPR or other EU or Member State data protection provisions.
- f. The subject matter, and the purpose, of Processing under this Contract is the provision of Services set out herein and such Processing may take place throughout the period during which such Services are provided, subject to clause 9(b)(vii). The nature of the Processing shall be those Processing operations that are necessary to enable the Supplier to provide the Services, which may be more particularly described in this Contract. This Processing shall be in relation to the Buyer's customers and/or employees (as appropriate) and may include, without limitation, names, contact details and identity information. The obligations and rights of the Buyer, as Controller, are as set out in this clause 9 and elsewhere in this Contract. The Buyer may make reasonable amendments to this clause 9(f) by written notice to the Supplier from time to time as the Buyer reasonably considers necessary to meet the requirements of Article 28(3).

#### **10. INDEMNITY**

The Supplier shall indemnify the Buyer against any direct, indirect or consequential losses, damages, proceedings, liabilities, claims, costs and expenses (including legal expenses on a full indemnity basis) which may be suffered or incurred by the Buyer as a result of or arising out of or in connection with:

- i. any Goods and/or Services failing to comply with any of the Supplier's assurances ;
- ii. any Goods and/or Services being defective or failing to comply with any applicable laws or regulations;
- iii. any late or incomplete delivery of the Goods or performance of the Services by the Supplier;
- iv. any other breach of the Contract by the Supplier or any negligent act of the Supplier, its employees, agents or contractors (whether or not causing or contributing to death and/or personal injury);
- v. any claim made against the Buyer in respect of any liability, loss, damage, cost or expense sustained by the Buyer's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods and/or the Services; or
- vi. any actual or alleged infringement by the Supplier of the rights of a third party or the Buyer under any patent, registered design, copyright, design right, trade mark, service mark or trade-name or other intellectual property rights.

#### **11. TERMINATION AND SUSPENSION**

- a. The Buyer may terminate the Contract forthwith or suspend the whole or any outstanding part of the Order by written notice to the Supplier if:-
  - i. the Supplier is in delay with the delivery of the Goods or the completion of the Services or if he breaches any other term of the Contract despite setting an adequate time limit to omit the breach;
  - ii. the Buyer cannot reasonably be expected to continue the contractual relationship for any other reasons in the person of the Supplier taking into account the circumstances of the individual case and weighing the mutual interests of both parties, this especially applies if there are circumstances in the person of the Supplier according to which it can be expected that the Supplier can no longer fulfill his obligations under this contract.
- b. The Buyer reserves the right in the circumstances stated in clause 11 a to remove from the premises where they are being made any the Goods in course of preparation for the Contract and to have the same completed elsewhere or to remove from the premises where they are being processed or otherwise dealt with in connection with the Services any materials provided to or on behalf of the Supplier in connection with the Services. The Buyer shall be entitled to charge the Supplier the costs incurred by the Buyer in having the Goods and/or the Services completed by others but shall credit to the Supplier a fair proportion of the price for any Services provided, the Goods or materials so removed or work in progress taken over by the Buyer.

#### **12. MISCELLANEOUS**

- a. Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer under this Contract or any other contract.
- b. Nothing in this Contract shall create or be deemed to create a partnership between the parties.
- c. The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.
- d. Any provision of these Conditions which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these Conditions and the remainder of such provision shall not be affected.
- e. Notices must be in writing, in German, to the Buyer's or the Supplier's address and may be delivered by hand, first class post, facsimile or by electronic mail. If delivered by hand, the notice shall be deemed delivered on the first working day after day of delivery. If delivered by post, the notice will be deemed delivered on the third working day after being placed prepaid in the first class post. If delivered by facsimile or electronic mail, the notice will be deemed delivered at the time of transmission.
- f. No failure or delay by the Buyer to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy. No remedy for the Buyer conferred by any of the provisions of the contract is intended to be exclusive of any other remedy, and every remedy will be cumulative and in addition to every other remedy.
- g. The provisions of these Conditions which expressly or impliedly have effect after termination of the Contract shall continue to be enforceable notwithstanding termination (including clauses 7, 8, 10, and 11b).
- h. The parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it (Rights of Third Parties according to § 328 German Civil Code). To avoid doubt, a person who is not a party to the Contract shall not have any rights under or in connection with it.
- i. The Contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany and the Supplier submits to the exclusive jurisdiction of the courts of the Federal Republic of Germany.