1 GENERAL

a. In these Conditions, “Buyer” means Element Materials Technology Cleveland Inc.; “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; “Company” means Element Materials Technology Cleveland Inc. and any of its successors or assigns; “Contract” means the contract or contracts made between the Buyer and the Supplier; “Goods and/or the Services” means the goods or services, as the case may be, ordered by the Buyer or the Supplier for the purpose of the Contract or Order; “Order” means the Buyer’s order for the Goods and/or the Services from the Supplier; and “Supplier’s Warranties” means those warranties as set out in Sections 5a and 5b.

b. These Conditions apply to the Contract and/or Orders and govern the Contract and/or Orders to the entire exclusion of all other terms or conditions (including any terms or conditions which the Supplier purports to apply under any document or part of a document or heading supplied by the Supplier). Any variation to these Conditions shall have no effect unless expressly agreed in writing by the Buyer and specifically confirming over-riding provisions in these Conditions. These Conditions do not affect the Buyer’s statutory and other legal rights.

c. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 DELIVERY OF GOODS OR SERVICES

a. The Supplier shall deliver the Goods or complete the provision of the Services by the respective delivery or completion dates stated on the Order. If no dates are so specified, delivery of the Goods and 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 is not of the essence unless agreed otherwise in writing.

b. Delivery of the Goods and provision of the Services to the Buyer shall be at the respective places specified in the Order (or, if none is specified, at the Buyer’s premises from which the Order is placed) and by the methods specified on the Order (or, if none is specified, using such methods as comply with best accepted industry practices). The Supplier shall take all reasonable precautions to ensure on-time delivery of the Goods and/or completion of the Services.

c. Any claim for adjustment by the Supplier must be approved by the Buyer in writing. Any dispute arising out of such claims or any delay in payment must be referred to an arbitrator in accordance with the rules of the American Arbitration Association.

d. The Supplier 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 the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation, but such compensation shall not include loss of anticipated profits or any consequential loss.

e. Payment for the Goods to be delivered and/or Services to be performed under the cancelled Order shall be made in accordance with the Order and/or the Supplier’s Warranties.

3 PRICE AND PAYMENT

a. Unless otherwise stated on the Order the price for the Goods and/or the Services shall be denominated in US Dollars and is exclusive of all duties, fees, sales or use taxes, or cost of delivery, carriage, packing or insurance. The Supplier’s invoice date will be the due date for the payment and shall be included on the invoice. All additional charges for the Goods and/or Services must be approved by the Buyer in advance and in writing.

b. If no price is stated on the Order, a price must be agreed in writing with the Buyer before the Order is accepted by the Supplier.

c. The Supplier shall show the order number. Unless otherwise stated on the Order, payment shall be due from the Buyer sixty-five days from the invoice date. The Supplier may invoice the Buyer for 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 of any liability; and the Supplier shall continue to perform under the Contract or in the event of any dispute with or against the Supplier.

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 or its affiliates (without prejudice to any other remedies of the Buyer in default of any default by the Supplier).

4 TITLE

a. In title to and the risk of the Goods shall pass to the Buyer on delivery to the Buyer or, if appropriate, on receipt of the Goods by the Buyer’s carrier(s) provided that where the Goods are transferred to the Buyer in connection with the Services, title and risk shall pass to the Buyer on substantial completion of or into the premises or the property of the Buyer or on completion of the Services (whichever is earlier).

b. Where the risks or obligations of the Goods are to be transferred to the Buyer on delivery to the Buyer, the Buyer shall, subject to regulations, indemnify the Supplier against all losses or damages arising from such risks or obligations and the Supplier shall be entitled to deduct from the price any costs or expenses incurred by the Supplier in respect of such risks or obligations and the Buyer shall promptly obtain and deliver to the Buyer lien waivers from its landlord (if its premises become the Buyer’s property) and the Supplier shall be entitled to deduct from the price any costs or expenses incurred by the Supplier in respect of any lien, of which the Supplier becomes aware, in the case of the Goods or any material related thereto.

c. The Buyer shall be responsible for the Buyer’s superior title and lien rights. The Supplier shall also insure, at the Supplier’s cost and expense, said material against casualty or loss at the Buyer’s request.

5 WARRANTY AND LIABILITIES

a. In the case of the Goods, the Supplier warrants to the Buyer that:

i. The Goods 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 in the Order or that the Goods be of uniform and first quality, and shall be delivered in accordance with the time period indicated in the Order.

ii. Any return or exchange of the Goods shall be in accordance with the Supplier’s Return Policy.

iii. The Supplier’s Warranties shall supersede any other express warranties made by Supplier.

b. In the case of the Services, the Supplier warrants to the Buyer 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 of the best kind provided for by the trade and industry and be to the Buyer’s reasonable satisfaction.

ii. In the case of Services, skill and workmanship of the Supplier shall hold a balance and treat with the highest degree of care and skill and accepted within the trade and industry 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/or the performance of the Services.

iii. The Services shall be provided in accordance with applicable federal, state and local laws, rules and regulations (including, without limitation, the Foreign Corrupt Practices Act of 1977), and with all best accepted industry practices.

iv. In the case of the Services provided on or at the premises of the Buyer, the Supplier shall comply with all the Buyer’s site regulations in force in time to time and with other reasonable requests of the Buyer; and

v. The Buyer’s order for the Goods and/or the Services of the Buyer (or any of them) are to be paid with all the Supplier’s Warranties (regardless of the type or scale of the breach) the Buyer may, by giving notice to the Supplier:

a. require that all or any of the Goods (including all or any of the Goods not affected by such failure) are to be returned to the Supplier or any part of the Goods or Services is to be re-delivered to the Buyer with all costs and expenses of such return to be borne by the Buyer;

b. require the Buyer to refund to the Buyer any costs and expenses of such return to be borne by the Buyer;

c. refuse the Buyer any further delivery of the Goods or the further provision of any Services (including under another Contract);

d. require the Supplier (free of charge) to make good or replace the Goods or re-perform the Services to the Buyer’s satisfaction (in each case within thirty days). Any demand to make good, repair, replace, or reimburse the Buyer for the cost of non-conformity of the Goods or the Services or the cost of replacement may be made against the Supplier’s credit or guarantee; and

e. refuse the Supplier’s Warranties (specification and/or performance or otherwise).

f. In the case of Goods or equipment against casualty or loss at the Buyer’s request.

6 EXCUSED DELAYS

a. The Supplier may be excused from the delay of delivery or payment, cancel the Contract and/or Order, and/or otherwise vary the Contract and/or Order if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control (including, without limitation, acts of God, war, fire, breakdown of plant or machinery, unavailability of fuel or power, flood, storm, tempest, or national emergencies).

7 INTELLIGENT PROPERTY; THIRD PARTY CLAIMS; SECRECY

a. All designs, drawings, prints, samples and specifications prepared by the Buyer for the purposes of the Contract or Order, and any such items prepared by the Supplier for the purposes of the Contract or Order and representing, containing or embodying proprietary designs or other intellectual property of the Buyer or prepared by or supplied in accordance with the Buyer’s commission or specification (collectively, the “Work Product”), and all intellectual property rights in and to the Work Product, shall remain or automatically upon creation thereof become the Buyer’s property (as the case may be) and shall be returned to the Buyer upon termination or completion of the Contract or Order. 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
A. The Buyer may, in addition to its other rights and remedies, terminate the Contract or Order immediately, or suspend the whole or any outstanding part of the Contract or Order, by written notice to the Supplier if:

i. the Supplier fails to deliver or provide the Goods or Services or complete the Services on the date or within the period (as the case may be) required under Section 2a or breaches any other term of the Contract or Order;

ii. the Supplier is unable to pay its debts as they come due, ceases (or threatens to cease) to carry on its business, enters into any arrangement or composition with its creditors, commits any act of bankruptcy, or an order is made or an effective resolution is passed for its winding up, or if a petition regarding any of the foregoing is presented to a court, or if a receiver and manager, receiver, administrative receiver, or administrator is appointed for the Supplier, or the Supplier suffers any foreign equivalent of the foregoing; or

iii. the Buyer has reasonable grounds for suspecting that an event in Section 9a has occurred or will occur, or that the Supplier will not deliver the Goods or provide the Services in accordance with the Contract or Order and Supplier fails to provide timely adequate assurances of performance as otherwise provided by law.

B. The Buyer reserves the right in the circumstances stated in Section 9a to remove from the premises where they are being made any in the Goods in process or in connection with the Contract or Order and to have the same completed, delivered by hand, first class post, facsimile or electronic mail, the notice will be deemed delivered at the time of transmission of the Goods or 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.

C. The Supplier shall not be liable for any loss or damage to the Goods or Services caused by force majeure or circumstances beyond the Supplier's control, and the Buyer shall not be liable for any loss or damage to the Goods or Services caused by force majeure or circumstances beyond the Buyer's control.

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