1 GENERAL

a. In these Conditions, “Buyer” means Element Materials Technology Portland – Evergreen Inc.; “Supplier” means the supplier indicated on the Order; “Goods” means the goods or other materials stated on the Order and any ancillary necessary goods or materials; “Services” means the services stated on the Order and any ancillary necessary services; “Company” means Element Materials Technology Portland - Evergreen Inc., including its successors and assigns; “Contract" means the agreement or contract (written or verbal or both) made between the Buyer and the Supplier, for the sale and/or purchase of the Goods and/or Services; “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 any other terms and conditions (including any terms or conditions which the Supplier purports to apply under any acknowledgment of the Order or confirmation or other documents accompanying the Order or tender or such items or other materials of the Buyer or made under the Contract or Order, in the event of any dispute with or claim against the Supplier.

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

2 DELIVERY OF THE GOODS AND 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 shall be extended if delivery is delayed by any act of God, act of the Buyer, or by the Supplier’s (or its sub-contractors') negligence, in a minimum of 28 days from the date of the Order or by such other reasonable time as the Buyer or Supplier may agree.

b. Delivery of the Goods and provision of the Services to the Buyer shall be made 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).

c. The Supplier shall, save as provided for in Section 7a, retain title to the Goods stated on the Order until complete payment for the Goods or satisfaction of all other Terms and Conditions stated on the Order has been made and accepted. Any variation accepted for a price shall be pro rata for the actual quantity delivered.

d. The Goods shall be properly packed and stored during transit at Supplier’s expense, so as to reach their destination in an undamaged condition. All containers and other packaging shall be included in the price and not be returned to the Supplier.

e. The Buyer 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 or Order and the Buyer so informs the Supplier then the Supplier shall take all necessary steps to ensure compliance. No inspection or testing may imply any acceptance by the Buyer or the waiver of any contractual or statutory rights.

f. The Buyer may at any time make changes in writing relating to the order, including, without limitation, 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 increased 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 shall be approved by the Buyer in writing.

g. 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, but such compensation shall not include loss of anticipated profits or any consequential losses.

h. The Supplier shall not be entitled to payment for the Goods to be delivered or Services to be performed under the cancelled Order.

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 packaging.

b. If no price is stated on the Order, a price must be agreed in writing with the Buyer before the Supplier shall supply any Goods.

c. Payment by the Buyer shall be without prejudice to any claims or rights which the Buyer may have against the Supplier.

4 RISK AND TITLE

a. Where the Buyer mentions or refers to the Goods or Services in writing, the risk as to loss or damage to the Goods or Services from whatever cause shall pass to the Buyer on the negotiation of the Order or such other date as is stated in writing to the Buyer.

b. The price of the Goods and/or the Services shall be inclusive of all duties, fees, sales or use taxes, or cost of delivery, carriage, packing or packaging.

5 WARRANTY AND LIABILITIES

a. All goods delivered or performed shall be of first quality, sound design, merchantable, and fit for any purpose intended by the Supplier or as specified by the Buyer or as may be reasonably inferred from the Contract, Order or dealings between the parties, and the Supplier shall hold as bailee and treat with the highest degree of care and skill accepted within the industry and 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 the Supplier shall provide evidence of such compliance to Buyer, in accordance with the manufacture, packaging, labeling, delivery of the Goods, and with all applicable federal, state and local health, safety and environmental laws, rules and regulations, and with best accepted industry standards.

b. Any alteration, change, or modification to the Goods or Services ordered shall be agreed in writing with the Buyer and the Supplier.

6 FORCE MAJEURE

a. In the event of closed plants or strikes or consents (including, without limitation, acts of God, war, fire, breakdown of plant or machinery, unavailability of fuel or power, flood, storm, tempest, fire or other industrial emergencies).

b. The Supplier shall not be liable for the delay of date or delivery of 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, and industrial emergencies).

7 INTELLECTUAL 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 to the Supplier 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 completion or termination 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
documentation, authorization, waivers or declarations as may be reasonably required to vest full right, title, and interests in the Work Product and all of their associated intellectual property rights in the Buyer, and to waive all moral rights held by any authors of the Work Product.

b. The Supplier shall not or may not be used in any manner not approved by the Buyer, the Work Product, any trademarks 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 authorize 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 authorize any third party to omit to do any act which, by its omission, would have that effect.

d. The Supplier shall not (and shall require that its officers, agents and employees shall not) during or after the Contract or Order is completed, disclose or allow to be disclosed to any person any confidential information relating to the business, affairs or property of the Buyer or any of the Goods or the Services or any such information referred to in Section 7a (collectively, “Confidential Information”), or any information or data that can be used to identify or locate a person or entity or the activity, assets or personal information of a person or entity, including any information or data that is protected by applicable privacy laws (collectively, “Personal Data”) without the Buyer's prior written consent. The Supplier shall only use the Confidential Information and Personal Data (collectively, the “Protected Information”) as necessary to provide Goods and/or Services to the Buyer under the Contract. Except as expressly permitted by the Buyer in writing, the Supplier shall not (i) disclose any Protected Information to any third party, or (ii) duplicate, transfer, sell, publish, transmit, modify, inverse engineer or take any benefit from any Protected Information, or (iii) directly or indirectly assist, facilitate or encourage any third party to carry on any activity that the Supplier is not permitted to carry on, relating to the Contract. If the Supplier is required to disclose Protected Information by law or court order, the Supplier shall provide Buyer with sufficient advance notice to enable Buyer or the opportunity to contest the disclosure or obtain a protective order and the Supplier shall strictly limit such disclosure to the Protected Information which the Supplier is advised, in writing, by legal counsel as being legally required to be disclosed. The Supplier shall also use and take all reasonable security measures to protect the Protected Information from loss, theft and unauthorized use, access, disclosure, duplication, modification, and deletion. The Supplier shall promptly notify Buyer in writing of any breach or suspected breach of security or confidentiality involving any Protected Information, and shall use reasonable efforts to limit or reverse any damage caused by that breach.

As between Buyer and Supplier, the Buyer exclusively owns (a) all Protected Information, (b) all copies, notes and recordings of any Protected Information made by or for the Supplier, and (c) all proprietary rights or interests in or associated with the Protected Information. Promptly upon the Buyer's request the Supplier shall deliver to the Buyer all documents and other material in the Supplier's possession or control which belong to the Buyer or which contain, reveal or embody any Protected Information, and the Supplier shall destroy all remaining copies in its possession or control except for one copy retained by Supplier for archival and compliance purposes such as licensing, legal, and governmental/regulatory requirements provided that such retained copy is protected pursuant to the provisions of these Conditions for so long as it is retained even if these Conditions, the Contract or Order have terminated.

8. INDEMNITY

The Supplier hereby indemnifies and agrees to hold the Buyer harmless from and 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, or its affiliates, as a result of or arising out of in connection with:

a. any Goods and/or Services failing to comply with any of the Supplier’s Warranties;

b. any Goods and/or Services being defective or failing to comply with any applicable federal, state or local laws, rules or regulations;

c. any late or incomplete delivery of the Goods or performance of the Services by the Supplier;

d. any other breach of the Contract or Order 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);

e. any claim made against the Buyer in respect of any liability, loss, damage, cost, or expense sustained by the Buyer’s employees or agents, 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

f. any actual or alleged infringement, misappropriation or violation by the Supplier, including arising from or in connection with the Goods, the Services and/or the Work Product, of the rights of a third party or the Buyer under any patent, registered design, copyright, design right, trademark, service mark, or trade-name or other intellectual property rights.

9. TERMINATION AND SUSPENSION

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 commence 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 become due, ceases (or threatens to cease) to carry on its business, enters into any arrangement or composition with its creditors, or 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, administrator, receiver or administrator is appointed for the Supplier, or the Supplier suffers any foreign equivalent of the foregoing; or

iii. the Supplier has reasonable grounds for suspecting that an event in Section 9a ii 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 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.

10. PROHIBITION OF SLAVERY

a. In performing its obligations under the Contract or Order, the Supplier shall, and shall ensure that each of its subcontractors shall, comply with all applicable laws, statutes, regulations and codes relating to the prevention of slavery and human trafficking.

b. The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

c. The Supplier shall notify the Buyer as soon as it becomes aware of any actual or suspected slavery or human trafficking in its supply chains.

d. The Supplier shall provide the Buyer with a list of its direct and indirect suppliers and any changes to that list.

e. The Supplier shall ensure that its officers, agents and employees shall not) during or after the Contract or Order is completed, disclose or allow to be disclosed to any third party any Protected Information which the Supplier is

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11. MISCELLANEOUS

a. The Contract or Order may not be assigned by the Supplier and the Supplier may not subcontract manufacture of the Goods or provision of the Services without the Buyer's prior written consent.

b. Any provision of these Conditions which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonably (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.

c. Notices may be served, in English, to the address of the Supplier's address and may be delivered by hand, first class postage, facsimile, or electronic mail. If delivered by hand, the notice shall be deemed delivered on the first working day after day of delivery. If delivered by posting, the notice will be deemed delivered on the third working day after being placed prepaid with the U.S. Postal Service. If delivered by facsimile or electronic mail, the notice will be deemed delivered at the time of transmission if within regular business hours or if outside a regular business hours the next following regular business day provided there is confirmed transmission of the facsimile or electronic mail.

d. No failure by the Buyer to enforce any provision of the Contract or Order shall be construed as a release of its rights under or to enforce such provision or to sanction any further breach by the Supplier. No remedy for the Buyer conferred by any of the provisions of the Contract or Order is intended to be exclusive of any other remedy, and every remedy will be cumulative and in addition to and further every remedy.

e. The provisions of these Conditions which expressly or impliedly have effect after termination or completion of the Contract or Order shall continue to be enforceable notwithstanding termination (including, without limitation, Sections 5, 7, 8, 9b, and 11).

f. The parties to the Contract or Order do not intend that any of its terms will be enforceable by any person not a party to such Contract or Order.

g. The Contract or Order shall be governed by and construed in accordance with the laws of the State where the Buyer is located, without giving effect to such State’s conflicts of laws principles.

h. The prevailing party shall be entitled to recover its reasonable legal expenses and attorney’s fees from the non-prevailing party in any proceeding instituted to enforce or interpret any provision of the Contract, Order or these Conditions.