Element Materials Technology Wixom Inc.  

Purchasing Terms and Conditions ("Conditions")

1. GENERAL

a. In these Conditions, "Buyer" means Element Materials Technology Wixom 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 services; "Services" means the services stated on the Order and any necessary ancillary services; "Company" means Element Materials Technology Wixom Inc. and any of its affiliates, subsidiaries, joint ventures, joint arrangements, or similar entities; "Contract" means the contract made between the Buyer and the Supplier in accordance with these Conditions; "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. 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 impose or which the Buyer accepts by operation of law, custom, practice or previous dealings), and shall not constitute any admission by the Buyer and the Supplier in writing. 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 any monies already paid and/or cancel the Contract or Order in the event of any dispute with or claim against the Supplier. These Conditions do not affect the Buyer's statutory and other legal rights.

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

d. Where the Buyer is a company, "its" or "its company" may be specified in the Contract or Order and shall be treated with the highest degree of care and skill and shall not exceed the price to be paid for the Goods to be delivered and/or Services to be performed under the cancelled Order.

e. The Supplier shall take all necessary steps to ensure compliance. No inspection or testing shall imply any acceptance by the Buyer nor 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 must be approved by the Buyer in writing.

2. 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 price shall be liable to increase or decrease in accordance with the terms of the Order. Discounts, if any, shall be notified in writing. Taxes will not be included on the Order but shall be included in 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 before the Buyer orders the goods or the services.

c. The price stated on the Order shall be the price for the Goods. Any or all of the monies owing by the Buyer to the Supplier for any monies already paid and/or cancel the Contract or Order in the event of any dispute with or claim against the Supplier.

d. 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 any monies already paid and/or cancel the Contract or Order in the event of any dispute with or claim against the Supplier.

3. WARRANTY AND LIABILITIES

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

i. the Goods as delivered or completed 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; and be to the Buyer’s reasonable satisfaction;

ii. the Goods shall be of the required quality, sound design, merchantable, and fit for any purpose intended by the Supplier or 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

iii. the Goods shall be provided in accordance with all applicable federal, state and local laws, rules and regulations (including, without limitation, the Foreign Corrupt Practices Act of 1977), and with all necessary ancillary goods or materials; "Services" means the services stated on the Order and any necessary ancillary service, skill and workmanship 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

iv. the Services shall be performed in accordance with all applicable federal, state and local laws, rules and regulations (including, without limitation, the Fair Labor Standards Act of 1938), and with all necessary ancillary goods or materials; "Services" means the services stated on the Order and any necessary ancillary service, skill and workmanship 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

v. the Services shall be performed in accordance with all applicable federal, state and local laws, rules and regulations (including, without limitation, the Fair Labor Standards Act of 1938), and with all necessary ancillary goods or materials; "Services" means the services stated on the Order and any necessary ancillary service, skill and workmanship 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

vi. the Services shall be performed in accordance with all applicable federal, state and local laws, rules and regulations (including, without limitation, the Fair Labor Standards Act of 1938), and with all necessary ancillary goods or materials; "Services" means the services stated on the Order and any necessary ancillary service, skill and workmanship 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

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

viii. the Buyer and all workers under its supervision and control shall be covered by liability insurance of no less than US $2,000,000 and that the Supplier is in compliance with all applicable Workers Compensation laws and Supplier shall provide evidence of such compliance to Buyer, upon request. All such insurance shall be maintained by Supplier for the term of the Contract or Order and for a period of 3 years following termination or completion thereof.

c. 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 (regardless of the type or scale of the breach) the Buyer may, by giving notice to the Supplier:

i. reject all or part of the Goods (including all the Goods not affected by such failure to comply), and/or require the immediate refund of any monies already paid and/or cancel the Contract or Order;

ii. require the Supplier to replace (at the Supplier's cost) any damaged or non-conforming Goods or otherwise correct the Goods or re-perform the Services within 30 days from the date of delivery.

3. TITLE TO PROPERTY

a. The title to all items provided to the Supplier shall remain with the Supplier until the Supplier has received payment in full for the Goods or in accordance with these Conditions.

3. 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 the Order, and any such materials prepared by the Supplier for the purposes of the Contract or Order and the Buyer's intellectual property rights in and to the Work Product, and all intellectual property rights in and to the Work Product, shall remain or automatically upon creation thereof be 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

4. INTELLECTUAL PROPERTY; THIRD PARTY CLAIMS; SECRECY

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b. The Supplier shall not use or allow to 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 to 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 data relating to 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 or in connection with:

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

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

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, any customer or a 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;

vi. 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 by Section 2a or breaches any other term of the Contract or Order;

ii. the Supplier, being 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, 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, administrative receiver, or administrator is appointed for the Supplier, or the Supplier suffers any foreign equivalent of the foregoing;

iii. the Supplier 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 the Goods are being made any Goods in the Contract or Order 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.

10. PROHIBITION OF MODERN 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 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.

e. 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.

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 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 remaining provision of such provision shall not be affected.

c. Notices may be served, in English, at the address of the Buyer or Supplier as the case may be, or as any party may from time to time notify a party of the other party’s address, and shall be delivered by hand, first class post, 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 post, 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 any other 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.