ELEMENT MATERIALS TECHNOLOGY

TERMS AND CONDITIONS (DE)

1. Formation of Contract

1.1 These terms and conditions ("Terms and Conditions") together with any quotation, proposal, estimate or fee quote ("Quotation") provided by or on behalf of the Company (as defined below) shall apply to all contracts for the supply of testing, calibration and/or other services ("Services") carried out by Element Materials Technology Hamburg GmbH ("Company") providing the services contemplated herein to a customer ("Customer").

1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in, or referred to in, Customer's purchase order or acceptance of a quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in the Company's confirmation of order, or implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 Written and oral Quotations shall be valid for sixty (60) days from the date thereof and the Company may withdraw any such Quotation at any time until the conclusion of a Contract (as defined below). No Quotation given by the Company shall be an offer to contract with any person and no contract shall come into existence except in accordance with sub-condition 1.4.

1.4 The Customer's purchase order or the Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Services specified in the Quotation or upon these Terms and Conditions. The offer placed by the Customer shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company or (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of those Services on these Terms and Conditions will be established (the "Contract").

1.5 No acceptance or acknowledgement, even if in writing and signed by the Company, of the Customer's purchase order or any other document pertaining to the Services shall constitute acceptance of any provision of the Customer's purchase order or any other document that conflicts with or adds to these Terms and Conditions unless the Company specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 2.1.

1.6 The delivery to the Company by the Customer of any item for testing or calibration by the Company (a "Sample") or the delivery of any request set out the condition(s) or sub-condition(s) to be varied or waived and the condition(s) or sub-condition(s) to be varied or waived that Conflicts with the foregoing, this includes payments of fees due to the Company acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.

2. Variation including Cancellation, Postponement and Amendment

2.1 These Terms and Conditions may not be varied or waived by either party unless the variation or waiver is in writing and is signed by an officer or duly authorised signatory of the Company. The variation or waiver must set out the condition(s) or sub-condition(s) to be varied or waived and the detail of each such variation or waiver.

2.2 The Customer may cancel, postpone or amend any order (in whole or in part) at any time.

2.3 In case of postponement or amendment of an order after the conclusion of a Contract, the Customer shall pay to the Company the full amount of the Consideration (as defined in sub-condition 3.1) relating to such order plus all Costs (as defined in sub-condition 3.1) relating to such order incurred by the Company prior to the date of the postponement or amendment plus all expenses and costs incurred by the Company as a result of the postponement or amendment. The Company reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Contract have materially changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested, for example, producing written descriptions of detailed procedures undertaken as part of the Services. For the avoidance of doubt, approval of such additional requests shall remain at the Company's discretion.

3. Prices & Payment

3.1 The Customer shall pay to the Company the charges set out in the Quotation, if applicable, or as otherwise contemplated for the provision of the Services ("Consideration") and shall pay the Company on demand for any expenses incurred in the provision of the Services ("Costs"), unless expressly agreed otherwise in writing.

3.2 The Company may issue invoices in respect of Services:

3.2.1 upon completion of the Company's reasonable satisfaction of separate parts of the Services, in which case, the Company will invoice for that proportion of the total Consideration for the Services performed under the Contract; or

3.2.2 in a manner otherwise specified in the Quotation, including individual lines on the Quotation, or order confirmation.

3.3 The Customer shall pay the Consideration and Costs stated in any invoice for Services provided pursuant to these Terms and Conditions in full, without deduction or set-off, within thirty (30) days of the date stated on that invoice. The Consideration shall be paid free and clear of, and without deduction for and on account of, statutory value added tax or any other tax unless the Customer is required by law to make such payment subject to the deduction of withholding tax, in which case the sum paid by the Customer shall be increased to the extent necessary to ensure that after such deduction or withholding the Company receives an amount equal to the Quotation plus Consideration and Costs it would have received had no such deduction or withholding been required.

3.4 The Customer shall pay the Consideration and Costs to the Company by electronic bank transfer in cleared funds in the currency specified in the Company's Quotation, proposal or order confirmation. All payments due to the Company shall be payable within the specified time irrespective of whether or not the Customer has recovered payment from a third party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, this includes payments of fees due to the Company acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.

3.5 If the Customer fails to pay within the thirty (30) days as stated in sub-condition 3.3, it is in default without further notice. In default of payment, the Company may: suspend any further Services being carried out for the Customer; withhold the provision of Reports (as defined in sub-condition 4.2); alter or withdraw credit terms; and amend terms, prices or service levels. The amount outstanding from time to time shall bear interest, calculated from the day following the occurrence of default based on the statutory interest rate (Basiszinssatz).

3.6 The Company may retain or set off any sums owing to it by the Customer which have failed to be or are payable against any sums due to the Customer under the Contract or any other agreement between the parties or any of their Group Companies. "Group Company" means, in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company.

3.7 The Customer undertakes that during the provision of the Services and for 6 months following completion thereof, the Customer shall not:...
provided written information, results, technical reports, certificates, and other information or documentation concerning the performance of the Services, the Customer shall notify the Company. The Company's maximum liability to the Customer for any delay in the performance of any obligation under the Contract shall not exceed 5% of the Consideration, provided that the delay is due to a slight negligence of the Company.

The Company's obligation to complete Services under the Contract shall be subject to any obligation it may have to comply with any law or other regulation binding on it which may be in force from time to time.

No employee, agent or other person is authorised to give any warranty or make any representation on behalf of the Company in relation to the Services. The Company shall not be liable in respect of the Services to the Customer for any other liability in connection with the Services, unless such warranty, representation or assumption of liability is given to the Customer in accordance with sub-condition 2.1.

In relation to radiography reports and film delivered or interpreted as part of the performance of the Services, the Customer shall notify the Company within fourteen (14) days from date of issue of such radiography reports and film, of any Customer or third party dispute concerning either the radiographic quality or interpretation of results. If the Customer does not so notify the Company within this fourteen (14) day period, the Customer will be deemed to have accepted the radiography reports and film, together with any interpretation of these, provided by the Company.

The Customer warrants to the Company the completeness and accuracy of all documents and information supplied to the Company for the purposes of the Company fulfilling the Services, both at the time of supply and subsequent to the supply.

Reports are issued on the basis of information known to the Company at the time that the Services are carried out. Although the Company will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Customer, its staff and on the information submitted to the Company. All Reports are prepared on the basis that:

- there is no responsibility to any person or body other than the Customer;
- they are not produced for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
- the Report is determined solely by the professional analysis undertaken by the Company's staff on each individual Contract and any forecasts by the Company of the results is an estimate only;
- the Company is entitled to be paid the Consideration irrespective of the results or conclusions reached in the Report;
- the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
- the results are final and approved by the Company. The Company shall be under no liability where the Customer has acted on preliminary, unapproved results or advice.

The Customer shall supply as much information as possible, including a unique purchase order number, reference or authorization, about each Sample and/or Service requirement in order to assist in achieving an efficient service. If a Customer provides the Company with detailed instructions in writing as to the treatment and handling of particular items of the Customer's property, the Company will use its reasonable endeavours to comply with such instructions.

The Company shall inform the Customer in writing prior to the Company carrying out any Service on a Customer site or Sample that is of a dangerous or unstable nature, as well as notify the Company of any actual or potential health & safety hazards relating to a Sample and arising from the Company's performance of the Services, and shall provide instruction on the safe visiting of the site or safe handling of the Sample. The Customer shall accept full responsibility for appropriate safety labeling pertaining to the Sample and any equipment provided to the Company by the Customer.
9.2 All Intellectual Property Rights (including usage and exploitation rights of copyrights in records, scientific documentary, primary data or electronic means of handling data) produced during any Service shall belong to and remain the property of the Company unless otherwise expressly agreed as part of the Contract.

9.3 Ownership and usage and exploitation rights of copyrights in the Report shall remain with the Company. Upon the Customer discharging all its obligations under the Contract, including payment of the Consideration, the Customer will obtain an irrevocable, royalty-free, non-exclusive licence to use the Report (including the right to sub-license) as set forth in condition 10, subject to the terms of sub-condition 9.2 and this sub-condition 9.3.

9.4 All Intellectual Property Rights in all service mark(s), trade mark(s), certification mark(s) and other names and logos owned by the Company shall remain the property of the Company and cannot be sold or licensed by the Customer.

9.5 When certification is granted the Company shall award a licence to the Customer to use the Company's certification mark(s) and logos for the certification validity period, subject to the applicable terms of use (as amended from time to time) which are issued with every certification and are available on request.

9.6 The Customer shall indemnify the Company against all losses to which the Company may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Customer for the performance of the Services involves the infringement of any Intellectual Property Rights of any third party.

9.7 Except for the rights to use set forth in condition 10, this Contract does not grant and shall not be construed as granting, any rights to either party to any name or mark of the other party. Neither party is granted any right to the other party’s name in connection with any publication and may not give any third party present or respond as required by law or any regulatory body.

10. Use of Reports

10.1 The Reports constitute confidential information that is to be protected and shall be used solely for the purposes of the Contract.

10.1.1 assist the Customer in completing its internal requirements and the Company in performing Services for the Customer;

10.1.2 comply with the Customer’s customer and other third party requirements for the delivery and use of the data recited in the Report;

10.1.3 present or respond on a claim in a court of law (provided that, where this is the purpose for which the Report is instructed this has been agreed with the Company in advance of the Report being instructed); or

10.1.4 present or respond as required by law or any regulatory body.

10.2.1 where the Customer disagrees with a Report or any portion thereof, in any manner that might reflect unfavorably upon the Company or its group, or which might be, or might include statements, interpretations or comments that could be, misleading or false.

11. Premises

11.1 The Company’s premises (the “Premises”) are a designated security area and:

11.1.1 the Company reserves the right to refuse admission to the Premises;

11.1.2 unless otherwise agreed in advance by the Company, one visitor per Customer may be admitted on request to witness the Services carried out for that Customer; and

11.1.3 visitors to the Premises shall conform to the Company’s regulations and procedures.

11.2 Where as a result of a Service is undertaken on premises not occupied by the Company or under its direct control, the Customer must ensure that all necessary safety measures are in place to comply with all applicable health and safety regulations, and save as otherwise agreed in writing between the parties or where identification of asbestos is part of the scope of the Services to be provided by the Company to the Customer, the Customer must ensure all asbestos has been removed and/or is safely contained in every area to be visited by the Company’s personnel during the visit to said premises.

11.3 In addition to any specific Customer obligations set out in the Quotation and the provisions of sub-condition 11.2, where Services are provided at the premises of the Customer, the Customer shall: (i) provide the Company with necessary access to any Customer premises; (ii) ensure that any premises provided by the Customer for the provision of any part of the Service is suitable for that purpose; (iii) provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc.) relevant to any Customer supplied premises; and (iv) provide the Company with any permits required for the performance of the Service.

12. Court and Other Proceedings

12.1 In the event that the Customer requires the Company to present the results or findings of any Service, whether carried out by the Company in witness statements, court hearings or other legal proceedings, the Customer shall pay to the Company such costs and fees for such presentations and the preparation thereof as the Company may charge to customers generally from time to time for such services and the Customer shall be liable for such costs in addition to the Consideration for the preparation of any witness statement and the preparation for and appearance at any court hearing. The Customer shall pay all such costs, whether or not the Customer has paid all outstanding Consideration under the Contract and whether or not the Company has closed the Customer’s file in respect of the matter.

12.2 If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Company in writing before the Services are carried out. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute discretion, be prepared to provide expert testimony.

13. Termination

13.1 For the purposes of this condition 13, “Sanctions Rules” shall mean any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions or designations made by any regulatory body.

13.2 For the purposes of sub-condition 13.1, the relevant events are:

13.2.1 if the Customer commits a breach of any of the terms of the Contract or any other contract with the Company which is incapable of remedy or, if capable of remedy, has not been remedied by the Customer in accordance with a written notice from the Company requiring remedial action within the period specified in the said notice;

13.2.2 if the Customer fails to make payment of the Consideration within the specified time;

13.2.3 if the Customer becomes unable to pay according to Section 17 or overindebted pursuant to Section 19, in each case, of the German Insolvency Code, the Customer or any other person files a petition for opening of insolvency proceedings on the assets of the Customer or such proceedings are opened;

13.2.4 if a foreclosure in the assets of the Customer takes place;

13.2.5 if the Customer ceases, or threatens to cease, to carry on its business;

13.2.6 if the Company reasonably apprehends that any of the events mentioned at sub-conditions 13.2.1 to 13.2.5 above is about to occur in relation to the Customer and notifies the Customer accordingly; and

13.2.7 if the Company reasonably apprehends that providing the Services or dealing with the Customer would be in breach of Sanctions Rules, the Customer fails to satisfy due diligence requests made by the Company in connection with compliance with Sanctions Rules or other relevant laws or regulations or the Customer does anything which is in breach of, or would cause the Customer to be in breach of, Sanctions Rules.

13.3 On termination of the Contract by the Company according to this sub-condition, the Customer shall pay to the Company the Consideration and the Costs relating to the Contract in the amount corresponding to the Services which the Company is required to do as a result, including the preparation of any report or statement, or as a result, including the appearance at any court hearing.

13.4 Termination of the Contract, however arising, shall not affect any of the parties’ rights, remedies, obligations and liabilities that have accrued as at the date of termination.

13.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14. Force Majeure

14.1 The Company shall not be liable for delay in performing, or failure to perform, any obligation under the Contract if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, riot, accident, terrorism, explosion, strike or labour dispute, any
law, or any action taken by a government or public authority, including
without limitation imposing an export or import restriction, quota or
prohibition, or failing to grant a necessary licence or consent, delay or
default by subcontractor or supplier of materials or services, the
existence of any circumstance making performance commercially
impracticable or any other cause beyond the party’s reasonable control,
provided that this condition 14 shall not apply to any obligation to make
any payments due to the Company under the Contract.
15. Waiver of Compliance
Where neither party hereto of a breach by the other party of any of the
provisions of these Terms and Conditions shall not be deemed a waiver
of future compliance therewith, and such provisions shall remain in full
force and effect.
16. Entire Agreement
16.1 The Contract constitutes the entire agreement between the parties
and supersedes and extinguishes all previous agreements, promises,
sassurances, warranties, representations, and understandings between
them, whether written or oral, relating to its subject matter.
16.2 Each party agrees that it shall have no remedies in respect of any
statement, representation, assurance, or warranty (whether made
innocently or negligently) that is not set out in the Contract. Each party
agrees that it shall have no claim for innocent or negligent
misrepresentation or negligent misstatement based on any statement in
the Contract.
17. Severability
If any provision or remedy herein provided for be invalid or unenforceable
or unlawful under any applicable law in whole or in part, it shall be
deemed to be amended in so far as it is possible to do so in order to
make it enforceable whilst retaining its purpose or severed from the
Contract if it is not possible to do so and the remaining provisions of
these Terms and Conditions, including any remaining default remedies,
shall be given effect in accordance with the intent hereof. In the
Company’s sole discretion it may terminate the Contract by not less than
seven (7) days’ written notice to the Customer in the event that it
considers that such deletion will have a materially adverse effect on its
rights under the Contract.
18. No Partnership or Agency
18.1 Nothing in the Contract is intended to, or shall be deemed to, establish
any partnership or joint venture between any of the parties, constitute
any party the agent of another party, or authorise any party to make or
enter into any commitments for or on behalf of any other party.
18.2 Each party confirms it is acting on its own behalf and not for the benefit
of any other person.
19. Third Parties
A person who is not a party to the Contract shall not have any rights.
20. Data Protection
For the purposes of this condition 20, “Data Protection Laws” shall
mean up to and including 24 May 2018 the Directive 95/46/EC
transposed as the German Federal Data Protection Act (“BDSG”), 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
any other applicable data protection legislation in force including the
new German Federal Data Protection Act 2018 (“BDGS-new”).
20.1 Within this condition 20, “Process/Processing/Processed”, “Data
Controller”, “Data Processor”, “Data Subject”, “Personal Data” and
“Personal Data Breach” shall have the same meaning as in the Data
Protection Laws.
20.2 The Customer agrees not to provide or otherwise make available
Personal Data to the Company, other than business contact information
(for example, business, telephone number, job title, and email address).
20.3 In the event that Personal Data is Processed by a party under or in
connection with the Contract as Data Processor, a separate
commissioned data processing agreement (“CPDA”) shall be entered
into by the parties which shall replace sub-conditions 20.4 and 20.5 for
these Services. The CPDA shall set out the nature, scope and type of
Personal Data to be Processed, any Customer and Data Processor
obligations under data protection law, the Data Processor’s obligations
under the Data Protection Laws, and the CPDA shall be entered
immediately before the Data Processor’s obligations under data
protection law.
20.4 Where Personal Data is Processed by a party under or in connection
with the Contract that party, as Data Processor, shall:
20.4.1 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 as required to meet the other party’s (as
Data Controller) lawful, documented and reasonable instructions
which shall unless otherwise agreed be to process Personal
Data as necessary to provide the Services pursuant to the terms of
this Contract. The Customer agrees that in such event to the extent that the
Data Processor is subject, provided that in such a case, the Data
Processor shall inform the Data Controller of that legal
requirement before Processing, unless that law prohibits such
information on important grounds of public interest. In particular,
the Data Controller instructs the Data Processor to transfer data
outside the EEA subject to the Data Processor complying with
the requirements of Articles 45 to 49 of the GDPR;
20.4.2 upon becoming aware of a Personal Data Breach:
(a) notify the Data Controller without undue delay; and
(b) provide reasonable co-operation (at the cost of the Data
Controller) to the Data Controller in connection with the
Personal Data Breach;
20.4.3 upon receiving any request, complaint or communication relating
to the Data Controller’s obligations under the Data Protection
Laws:
(a) notify the Data Controller as soon as reasonably practicable;
(b) assist the Data Controller by implementing appropriate
technical and organisational measures to enable the Data
Controller to comply with by a Data Subject under any Data
Protection Laws in respect of Personal Data processed by the Data Processor under
this Contract or comply with any assessment, enquiry,
notice or investigation under any Data Protection Laws,
provided in each case that the Data Controller shall
reimburse the Data Processor in full for all costs
reasonably incurred by the Data Processor performing its
obligations under this sub-condition 20.4.3;
20.4.4 ensure that at all times it has in place appropriate technical
and organisational measures as required by Article 32 of the GDPR;
20.4.5 ensure that its employees who may have access to the Personal
Data are subject to appropriate confidentiality obligations;
20.4.6 implement appropriate organisation and technical measures to
assist the Data Controller in meeting its obligations in relation to
Articles 33 to 36 of the GDPR taking into account the nature of
Processing; and
20.4.7 not authorise any sub-processor to process the Personal Data
(“sub-processor”) other than with the prior written consent of
the Data Controller, it being acknowledged that the Data
Controller consents to the appointment of sub-processors who
may from time to time be engaged by the Data Processor who
in each case are subject to terms between the Data Processor
and the sub-processor which are no less protective than those
set out in this condition 20, provided that the Data Processor
notifies the Data Controller of the identity of such sub-processors
and any changes to them.
20.4.8 cease the Processing of 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 Data Controller'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 the Data
Processor is required to retain the Personal Data due to a legal
or regulatory requirement, or by a requirement of an
accreditation body.
20.5 The Data Processor shall make available to the Data Controller such
further information (where applicable) as for and to contribute to any
audit or review exercise, conducted by the Data Controller or an auditor
mandated by the Data Controller to provide assurance that the Data
Processor is in compliance with the obligations set out in this
condition 20, provided always that this requirement shall not oblige
the Data Processor to disclose any information, unless the Data
Processor is permitted to disclose such information by (i) the Data
Processor's internal pricing information; (ii) information relating to other clients of the Data Processor; (iii) any Data Processor
non-public external reports; or (iv) any internal reports prepared by the
Data Processor’s internal audit or compliance functions. The Data
Processor must immediately inform the Data Controller if, in its
opinion, an instruction provided by the Data Controller pursuant to this Contract infringes the GDPR or the BDSG/BDGS-new.
21. Sub-contracting
21.1 Unless otherwise restricted by the terms of the Contract and/or
applicable legislation or governing approval, the Company
shall be entitled, in its absolute discretion, to sub-contract the whole
of or any part of the Service.
21.2 The Company may assign, delegate, license or hold on trust, all or any
part of its rights or obligations under the Contract.
21.3 The Contract is personal to the Customer which may not assign,
delegate, license or hold on trust or sub-contract all or any of its rights or
obligations under the Contract without the Company’s prior written
consent.
22. Confidentiality
For the purposes of this condition 22, “Confidential Information” shall
mean all information which a party may have or acquire before or after
the date of the Contract which relates to a party's business, products,
developments, trade secrets, know-how or other matters connected
with the Services and information concerning a party's relationships with
actual or potential clients, customers or suppliers and all other
information designated as confidential or which ought reasonably to be considered confidential.

22.1 Each party (the "Recipient") shall keep all Confidential Information of the other party (the "Disclosing Party") in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Recipient shall not, without the prior written consent of the Disclosing Party, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.

22.2 Notwithstanding condition 22.1, a Recipient may disclose Confidential Information which it has received if:

22.2.1 it is required to do so by any governmental, local government or regulatory authority, any accreditation body or by law (but then only to the extent it is strictly required to do so);

22.2.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to the Contract;

22.2.3 it was already known to the Recipient prior to the time of disclosure by the Disclosing Party (where the Recipient can prove the same with documentary evidence); or

22.2.4 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Recipient.

22.3 In the event of an information request being made to a Recipient pursuant to any Freedom of Information legislation or the Environmental Information Regulations 2004 in respect of any Confidential Information then the Recipient shall notify the Disclosing Party and shall not disclose any information until an analysis has been made as to whether the information requested is capable of benefiting from an exemption from disclosure.

22.4 The obligations of the parties under this condition 22 shall continue to apply without limit of time.

23. Export Control Licence

For the purposes of this condition 23, "Export Control Licence" shall mean any public or governmental licence, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by any United Kingdom or foreign authority which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, re-export products and/or provision of services and/or transfer of technology and/or Intellectual Property Rights.

23.1 The Company’s performance of its obligations under this Contract may, wholly or partly, be subject to Export Control Licences. If any such Export Control Licence requires signed end user certificates or any other United Kingdom or foreign governmental or court approvals or consents the parties agree to assist each other in completing the relevant end user certificates or other such approvals or consents and the Customer undertake to conform to and apply the terms of such, end user certificates, Export Control Licences or restrictions.

23.2 The Customer represents and warrants that it shall inform the Company in writing, prior to the Company carrying out any Service, of any applicable import or export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/imported to or from a country that is banned from such transaction.

23.3 The Company shall make reasonable efforts to obtain the necessary Export Control Licences, but the parties acknowledge that the issuance of Export Control Licences is at the sole discretion of the relevant authorities. If any necessary Export Control Licence are delayed, denied or revoked, the Company shall notify the Customer thereof in writing as soon as reasonably practicable, and the Company shall be entitled to a corresponding extension of the time for provision of the Services, and, in case any necessary Export Control Licence are denied or revoked, terminate the Contract, wholly or partly, without liability in relation to the Customer.

23.4 Should the Services or any product of the Company be subject to any Export Control Licences or any other United Kingdom or foreign governmental or court restrictions, the Customer undertakes to conform to and apply from time to time valid terms of such Export Control Licences or restrictions.

24. Anti-Corruption

24.1 The Customer undertakes to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 ("Anti-Corruption Laws") and that it shall not do, nor omit to do, any act that will lead to the Company being in breach of any of the Anti-Corruption Laws. The Customer shall:

24.1.1 comply with the Company’s Anti-corruption policies as may be notified by the Company to the Customer and updated from time to time ("Relevant Policies");

24.1.2 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;

24.1.3 promptly notify the Company (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract);

25. Notices

All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and forty eight hours after posting if posted by first class or airmail pre-paid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.

26. No Waiver

No failure or delay by the Company 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.

27. Governing Law

27.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of Germany.

27.2 Each party irrevocably agrees that the courts of Germany shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).