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 Warwick Ltd ("Company") providing the services contemplated therein on behalf of a customer ("Customer").

1.2 These Terms and Conditions shall supersede and override any terms or conditions contained therein or referred to in the 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. 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 upon these Terms and Conditions. No 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 by the Customer to the Company for the provision of any similar services shall, upon acceptance of that Sample or request by the Company, constitute an 'offer' (as referred to in sub-condition 1.4). If the Company begins such testing, calibration or similar services on that Sample, the offer shall be deemed to have been accepted by the Company and a Contract shall be formed. These Terms and Conditions shall apply to that Contract.

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, provided that the Customer shall pay to the Company the full amount of the Consideration (as defined in sub-condition 3.1) relating to such order incurred by the Company prior to the date of the cancellation, postponement or amendment plus any other losses, expenses and costs incurred by the Company as a result of the cancellation, postponement or amendment.

2.3 The Company reserves the right to review and amend any Quotation prepared in accordance with these provisions, 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 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 loss or excess, or any indirect or consequential loss or excess, or any indirect or consequential loss, or any other cost or expense incurred by the Company in relation to the Services or in connection with 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 Services; or

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

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

The Customer shall pay the Consideration and Costs stated in any invoice issued by the Company within 30 days from the date of the invoice. If the Customer eats to pay such invoices by cheque, bank transfer, or other means of payment, the invoice shall become due 7 days after the date of the invoice. The Customer shall pay the full amount of the Consideration (as defined in sub-condition 3.1) and Costs 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, 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 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, the Company 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 In default of payment within the thirty (30) days, 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 date due of the invoice to the date of receipt of the amount in full at a rate equivalent to 5% per annum above the base rate from time to time of HSBC Bank in the relevant currency.

3.6 The Company may retain or set off any sums owed to it by the Customer which have fallen due and payable against any sums due to the Customer under this Contract or any other agreement between the parties or any of their Group Companies. "Group Company" means, in relation to a 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: 3.7.1 solicit or entice away (or assist anyone else in soliciting or enticing away) any member of the Company's staff with whom the Company has had dealings in connection with the Contract and/or the provision of the Services during the 12 months immediately prior to the earlier of the date of the Customer's purchase order or the date of the Quotation; or

3.7.2 employ (directly or through a third party) any person as referred to in sub-condition 3.7.1 or engage them in any way to provide services to the Customer.

This undertaking shall not apply in respect of any member of the Company's staff who without having been previously approached directly or indirectly by the Customer responds to an advertisement placed by the Customer or on the Customer's behalf.

In the event of a breach of this undertaking, which leads to the departure of any person as referred to in sub-condition 3.7.1, the Customer will pay to the Company, on demand, a sum equivalent to 50% of the total annual remuneration (including expenses and bonuses) of the individual prior to his or her departure. The Customer acknowledges that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to the Company.

4. **Services**

4.1 Subject to the remaining sub-conditions of this condition 4, the Company warrants that it will complete the Services in a satisfactory and workmanlike manner, consistent with industry standards. The Customer expressly acknowledges and agrees that the Company gives no warranty that any result or objective can be achieved through the Services and that, where results are based on smaller scale tests and the potential studies referred to require careful validation in order to extrapolate to a production scale.
4.2 The Company will use its reasonable endeavours to complete Services and provide written information, results, technical reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (the “Report”) or certificate thereon to the Customer within any date reasonably requested by the Customer, but the Company shall not be liable to the Customer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Customer by reason of such delay.

4.3 The Company’s obligation to complete Services under the Contract shall be subject to any conditions relating to any radiation or other regulation binding on it which may be in force from time to time.

4.4 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 Contract, or to assume for the Company any other liability in connection with the Services. Any warranties, representation or assumption of liability is given to the Customer in accordance with sub-condition 2.1.

4.5 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.

4.6 In the event of certification services, the Customer agrees that the terms of the annex to these Terms and Conditions entitled “Certification Annex” shall apply.

4.7 The Customer represents and warrants to the Company the completeness and accuracy of all documents and information supplied to the Company. If the Services are such warranty, representation or assumption of liability is given to the Customer in accordance with sub-condition 2.1.

4.8 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:

4.8.1 there is no responsibility to any person or body other than the Customer;

4.8.2 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;

4.8.3 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;

4.8.4 the Company is entitled to be paid the Consideration irrespective of the results or conclusions reached in the Report;

4.8.5 the results of the Services shall address the items and information requested by the Company, and the Customer is entitled to rely on the results of said Services together with the Report as the sole and exclusive basis for any decisions made by the Customer;

4.8.6 the results are final and approved by the Company. The Company shall be under no liability wherever the Customer has acted on or in reliance on the said final results or advice.

5. Customers’ Property

5.1 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 its property, the Company will use its reasonable endeavours to comply with such instructions.

5.2 The Customer shall inform the Company in writing prior to the Company carrying out any Service on a Customer site or Sample the nature of any property delivered to the Company and the property itself delivered to the Company is clearly marked “Do Not Destroy or Damage”. If such notice is given and the Customer’s property is so marked, the Company’s liability for damage to or destruction of the Customer’s property is limited to the lesser of:

5.4.1 the value of the Customer’s property;

5.4.2 the cost of the Services performed on the damaged property pursuant to the Contract.

6. Re-Delivery

6.1 The Company will at the Customer’s reasonable written request, deliver the Customer’s property (other than that which is destroyed or damaged in transit directly and solely against such delivery company or other person, other than as expressly set out herein and as specifically warranted in writing to the Customer by an officer or duly authorised signatory of the Company in accordance with sub-condition 2.1) to the Customer. The Company reserves the right to invoice the Customer for all costs of disposal. Where property of the Customer is, in the sole opinion of the Company, too bulky or too unstable to allow storage time of more than one month, it will be at the absolute discretion of the Company as to the length of time said property is kept before being destroyed.

7. Title & Security

7.1 Title to the Customer’s property which is delivered to the Company and all risk of loss or damage to such property (except for loss or damage caused by the Company and for which and to the extent that the Company accepts liability under these Terms and Conditions) shall remain with the Customer at all times, who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Customer that the charges of the Company do not include insurance. The Company may retain all property delivered to it until all sums due and owing to the Company by the Customer have been paid.

8. Liability & Indemnity

8.1 This condition B sets out the entire financial liability of the Company, its employees, agents and sub-contractors to the Customer in respect of any breach of the Contract, any use made of Samples or any part of them on which Services are carried out and any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with the Contract.

8.2 Other than as expressly set out herein and as specifically warranted in writing to the Customer by an officer or duly authorised signatory of the Company in accordance with sub-condition 2.1, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.3 SUBJECT TO THE REMAINING SUB-CONDITIONS OF THIS CONDITION 8, THE COMPANY SHALL NOT BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION OR OTHERWISE FOR:

8.3.1 LOSS OF PROFITS; LOSS OF BUSINESS, LOSS OF REVENUE; LOSS OF MARKETS; LOSS OR DAMAGE INCURRED AS A RESULT OF A THIRD PARTY CLAIM; DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF CONTRACT; LOSS OF USE; LOSS OR CORRUPTION OF DATA OR INFORMATION; EX GRATIA PAYMENTS; OR

8.3.2 ANY LOSS, COST, CHARGE, DAMAGE, PUNISHMENT, FINE, PENALTY OR OTHER FINANCIAL LOSS, COSTS, DAMAGES, CHARGES, FINES, PENALTIES OR EXPENSES; OR PURE ECONOMIC LOSS.

8.4 SUBJECT TO CONDITIONS 8.3 AND 8.7, THE COMPANY’S TOTAL LIABILITY TO THE CUSTOMER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE GREATER OF (i) £5,000.00 OR (ii) THE CONSIDERATION FOR THE SERVICES PAYABLE EACH YEAR UNDER THE CONTRACT (INCLUDING VALUE ADDED TAX) FOR THE YEAR IN WHICH THE CLAIM IS MADE. Save in the case of fraud or fraudulent concealment by the Company, the Company shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless:
8.4.1 The Customer notifies the Company in detail and in writing of the alleged basis for the claim within two (2) months of the Customer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and
8.4.2 the Company is permitted to inspect any and all property with respect to which the Services are claimed to have been defective or to which Customer's claim otherwise relates.
8.5 Except where the Services are provided to a person who deals as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.
8.6 The Customer acknowledges that the above provisions of this condition 8 are reasonable and reflected in the price which would be higher without those provisions and the Customer will accept such risk and/or insure accordingly.
8.7 The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all losses which the Company may suffer or incur arising out of or as a result of:
8.7.1 breach of any law by the Customer in connection with the performance of the Services;
8.7.2 any claim threatened or made against the Company by any third party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of the Company) to the extent such claim is in excess of the Consideration paid or to be paid for the Services under the Contract that are subject to the claim; or
8.7.3 any claims arising as a result of any misuse or unauthorized use of any Reports issued by the Company or any Intellectual Property Rights belonging to the Company (including trade marks) pursuant to this Contract.
Notwithstanding any other provision of these Terms and Conditions, the Customer's liability under this indemnity shall be unlimited.
8.8 Nothing in these Terms and Conditions limits or excludes the liability of the Company for:
8.8.1 death or personal injury resulting from negligence; or
8.8.2 liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
8.8.3 any other matter which may not be limited or excluded by law.
8.9 This condition 8 shall survive termination of the Contract.

9 Intellectual Property Rights
9.1 In this condition 9, the following definitions apply:

**Intellectual Property Rights**

1. all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goods or services to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (now existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

9.2 All Intellectual Property Rights (including copyright 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 expressly agreed as part of the Contract.

9.3 Ownership and copyright in the Report shall remain with the Company.

9.4 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), subject to the terms of sub-condition 9.2 and this sub-condition 9.3.

9.5 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 used or licensed by the Customer.

9.6 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 which are available on request.

9.7 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.

9.8 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 press release or make any other public announcement regarding this Contract, the Services or any transaction between the parties without the express prior written consent of the other party.

10 Use of Reports

10.1 The Reports constitute confidential information that is to be protected and shall be used solely to:
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 and other third party requirements for the delivery and use of the data recited in the Conditions and Reports;
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 The Customer hereby undertakes that it shall not:
10.2.1 except as set out in sub-condition 10.1, disclose a Report (or information contained within a Report) to any third party without the prior written consent of the Company;
10.2.2 replicate or present a Report except in full as delivered by the Company without the prior written consent of the Company; or
10.2.3 use 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 the Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all losses which the Company may suffer or incur arising out of or as a result of:

11.2 Where any aspect of the Services is undertaken on premises not occupied by the Company or under its direct control, the Customer must:

11.2.1 ensure that no unsupervised access is allowed to the Premises;
11.2.2 ensure that the Premises are in a fit condition and safe for the performance of the Services;
11.2.3 provide all necessary safety measures 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:

11.3.1 notify the Company in writing before the Services are carried out.
11.3.2 provide all necessary safety measures 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.

11.4 The Customer must assist the Company in performing Services for the Customer;

11.4.1 assist the Company in completing its internal requirements and the Company shall be liable for such costs in addition to the Consideration.

11.5 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.

12 Court and Other Proceedings

12.1 In the event that the Customer requires the Company to present the results or findings of Services carried out by the Company in witness statements, court hearings or other legal proceedings, the Customer shall:

12.1.1 notify the Company in writing before the Services are carried out.
12.1.2 provide all necessary safety measures 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.

13 Termination

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, restricted or designated party lists, licences, orders, or requirements, in force from

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time to time, including without limit those of the European Union, the United Kingdom, the United States and the United Nations.

13.1 If the Customer becomes subject to any of the events listed in sub-condition 13.2, the Company may terminate the Contract with immediate effect by giving written notice to the Customer.

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 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 remedy 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 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;

13.2.4 An encumbrancer takes possession, or a receiver or administrator is appointed, over any of the property or assets of the Customer;

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

13.2.6 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 Company to be in breach of, Sanctions Rules.

13.3 On termination of the Contract for any reason the Customer shall immediately pay to the Company all indebtedness to the Company with applicable interest.

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 termination.

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

14. Force Majeure

The parties shall not be liable to perform any obligation under the Contract if inability to perform is caused directly or indirectly by any act of God, flood, war, riot, accident, terrorism, explosion, strike or labour dispute, compliance with any law, 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

Waiver by either 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, assurances, 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 under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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 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.

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), unless otherwise required for the provision of the Services, in which case such additional Personal Data shall be specifically identified in advance by Customer and agreed to in writing by the Company.

20.3 Where Personal Data is Processed by a party under or in connection with the Contract that party, as Data Processor, shall:

20.3.1 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), unless required by a law to which 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;

20.3.2 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;

20.3.3 upon receipt of any complaint, 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 any exercise of rights 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-section 20.3.3;

20.3.4 ensure that at all times it has in place appropriate technical and organisational measures as required by Article 32;

20.3.5 ensure that its employees who may have access to the Personal Data are subject to appropriate confidentiality obligations;

20.3.6 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 the information available to the Data Processor;

20.3.7 not authorise any sub-contractor to process the Personal Data (“sub-processor”) other than with the prior written consent of the Data Controller and be knowledgeable 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...
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 the 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 or 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 England and Wales.

27.2 Each party irrevocably agrees that the courts of England and Wales 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).
CERTIFICATION SERVICES ANNEX

Where the Company issues a Certification Service or Services, the terms of this Annex shall apply. Capitalised terms used in this Annex shall have the meaning ascribed to them in the Terms and Conditions, unless otherwise provided in this Annex.

The following terms shall be used in this Annex:

"Standard" means a document which contains details of specified requirements and methodologies for testing and/or inspection and/or certification against which the System, product, installation or person is assessed;

"System" means the organisational structure, responsibilities, activities, resources and events that together provide organised procedures and methods of implementation to ensure the capabilities of the particular Standard.

EXECUTION OF SERVICES

1. The Company shall not be required to enter into or maintain any commercial or other relationship with any entity or issue or maintain a certificate previously issued to any entity whose activities conflict with the obligations of the Company as specified in its accreditation contract with any accreditation body, or which, in the sole opinion of the Company, reflect badly on the good name of the Company.

2. The Services shall be carried out in accordance with procedures designed to ensure that any initial assessment, surveillance or certification relating to the subject of this facility is in compliance with the requirements of the Standard.

3. The Company reserves the right at its sole discretion to modify, amend or in any way alter the conduct and procedure of any activity, including any audit visit, if the Company deems this necessary in order to satisfy the requirements of the Standard, which may change from time to time.

OBLIGATIONS OF CUSTOMER

3.1 Where the Company is to provide certification Services to the Customer, the Customer shall:

3.1.1 always comply and conform with and fulfil the provisions and requirements of the applicable Standard and any other applicable requirements of the Company in order for the Company to maintain confidence in the System, product, installation or person;

3.1.2 ensure that a certification applies to ongoing production, the certified product continues to fulfil the requirements of the Standard;

3.1.3 make claims regarding certification consistent with the scope of the certification;

3.1.4 comply with the requirements of the Company or as specified by the Standard in making reference to its certification in communication media such as documents, brochures or other marketing materials; and

3.1.5 comply with any requirements that may be prescribed by the Company relating to the use of marks of conformity, and on information related to the certified product;

3.1.6 notify its certification in the following circumstances to the Company into disuse and not make any statement regarding its certification that the Company may consider misleading or unauthorized, nor use or permit to be used the certificate in a misleading manner;

3.1.7 keep a record of all complaints made known to it relating to completeness with certification and make those records available to the Company when requested, and take appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with certification, and document the actions taken;

3.1.8 not imply or claim that it applies to activities and sites that are outside the scope of certification, nor allow reference to its certification to be used in such a way so as to imply that the Company certifies a product (including service) or process which has not been certified;

3.1.9 not use its certification in such a manner that would bring the certification system into disrepute and loss of confidence (as the Company may reasonably determine, from time to time) if it is no longer valid or applicable;

3.1.10 only provide copies of certification documents to others if such documents have been reproduced in their entirety, or as specified in the applicable Standard;

3.1.11 keep all records, documents and paperwork relating to the Customer and the applicable Standard setting body (if applicable) and all applicable Standard setting body requirements;

3.1.12 not use its certification by the company, without delay, of matters that may affect the Customer’s capability to comply with the applicable Standard or the capability of the System to continue to fulfil the requirements of the applicable Standard. These include, for example but without limitation:

3.1.12.1 the legal, commercial, organizational status or ownership of the Customer;

3.1.12.2 organization and management (e.g. key managerial, decision-making or accreditation officers);

3.1.12.3 contact address and sites;

3.1.12.4 scope of operations within the System or the Customer;

3.1.12.5 major changes to the System and Customer;

3.1.13 ensure that its System complies with the current versions of the Standard(s) against which it is certified. Current versions of the rules, regulations and Standards can be obtained from the responsible Body or the Company;

3.1.14 comply with any conditions set by the Company for the issue of a Report and/or recognising that the Company holds the relevant information and that it is responsible for the requirements of certification within the period of validity of the certificate;

3.1.15 acknowledge that initial certification may only be granted once all non-compliances have been actioned in accordance with the applicable Standard;

3.1.16 acknowledge that on-going certification is reliant on continued compliance with the Standard, rules, regulations or any applicable Standard setting body, which may change from time to time, including the requirement to address any non-conformances to the satisfaction of the Company in the specified time periods; and

3.1.17 declare to the Company any activity which may create a conflict of interest in relation to its certified System.

3.2 The Customer represents and warrants to the Company that, in the event of the issue of a certificate, to inform the Company in writing immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification.

3.3 The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all Losses which the Company may suffer or incur arising out of or as a result of:

3.3.1 the Company's acts, omissions or conduct or any failure to ensure that the certificate, or any other matters affecting the Customer, complies with the applicable Standard;

3.3.2 the use or misuse by the Customer of any certificate, licence, logo, service mark or trade mark provided by the Company in accordance with these Conditions.

Notwithstanding any of the provisions of these Conditions, the Customer’s liability under this indemnity shall be unlimited.

3.4 The Company acknowledges the authority of the accreditation body and agrees to assist the Company and accept all appropriate requests made by the accreditation body in relation to the certification e.g. witness audits.

3.5 Where the Company’s withdrawal is subject of its certification, the Customer shall inform the Company in writing of any product recall under the scope of the certificate within three (3) working days.

Suspension or withdrawal of certification

4.1 The Company shall be entitled to suspend or withdraw part or all of a certification on seven (7) days’ written notice (or within such timescales as the Company may reasonably specify, including with immediate effect in the case of urgent need) when, in the reasonable opinion of the Company:

4.1.1 the Customer’s acts, omissions or conduct bring or may bring the Company into disrepute or disallow the Company from continuing to provide a certification Service to the Customer;

4.1.2 the Customer represents, promotes or advertises any products or Systems which are outside the scope of its certificate as certified by the Company;

4.1.3 the Customer misrepresents or misleads information which is not within the scope of (or is not implied by) the certificate in an inaccurate or misleading manner;

4.1.4 the Customer is in breach of or is not subject to the requisite ancillary licence agreements, including any attributable to the accreditation body;

4.1.5 if the Customer fails to maintain or demonstrate an effective System such that the confidence in the certificate is adversely affected; or

4.1.6 the Customer has persistently or seriously failed to meet certification requirements for a particular part or parts of a relevant Standard.

4.2 Where permitted by the relevant Standard, the Company will afford the Customer a reasonable opportunity to take corrective action before the suspension or withdrawal takes effect. In the event of suspension or withdrawal, the Company will notify the Customer, its Customer’s names and logos belonging to the Company, the accreditation body and from the Standard setting body, all reasonable and applicable details of the suspension or withdrawal, including how to appeal against the suspension or withdrawal.

4.3 In the event the Company is unable to supply certification or is no longer able to supply certification, the Company will notify the Customer within thirty (30) days and the certification will be suspended.

4.4 In the event that the Company suspends or withdraws a certificate, the Customer (including the Customer’s group companies) shall:

4.4.1 immediately refrain from any claims or representations (oral or written, express or implied) that products comply with the requirements of the certificate, the Company or the Standard setting body;

4.4.2 immediately refrain from any promotion of the certificate or use of any references to the certificate, including discontinuing use of all advertising material that contains a reference to certification;

4.4.3 immediately at its own expense remove all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, the accreditation body and from the Standard setting body, from its internal documents, information, website, documents advertising or marketing or any other material;

4.4.4 immediately cease to sell any products bearing any service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, the accreditation body and the Standard setting body;

4.4.5 immediately cease and desist from using any service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, the accreditation body and the Standard setting body;

4.4.6 amend all advertising material on a certificate has been suspended or withdrawn;

4.4.7 make the suspended status of the certification publicly accessible;

4.4.8 notify the Standard setting body; and

4.4.9 take any other measure required by the Company or prescribed by a Standard.

4.5 Where suspension or withdrawal of certification is reliant on continued compliance with the applicable Standard, including implementing appropriate changes when they are required, the Customer will ensure that reasonable cooperation and assistance is provided to the Customer/purchaser, the Company and its Customer’s names and logos belonging to the Company, the accreditation body and the Standard setting body.

4.6 In the event that the Company withdraws a certificate, the Customer (including the Customer’s group companies) shall promptly return the original and all copies of the certificate to the Company or destroy the original, and commit to destroy any electronic copies and hardcopies in its possession or control.

CONFIDENTIALITY

5.1 The obligations of the parties under this paragraph 5 of this Annex shall apply in addition to Condition 22.

5.2 Where the Customer agrees that information relating to its certification and scope of certification can be made publicly available by the Company and the Standard setting body.

5.3 The Company shall ensure that, in accordance, of any other information it intends to place in the public domain. All such information that is made publicly accessible by the Customer, shall be considered confidential.

5.4 Where prescribed by a Standard setting body:

5.4.1 the Customer shall promptly provide to the Company and the Standard setting body and their respective authorised agents all such information, documentation books and records deemed necessary by the Company or Standard setting body; and

5.4.2 the Customer agrees that the Company and/or the Standard setting body shall have the right to use and process any information relating to the Customer or otherwise provided to the Customer, or to otherwise make use of such information in the conduct of its business, including through the publication of statistical reports, the Company public summary reports; data required by the Standard setting body for calculations and regulatory reporting; any data required by the Standard setting body to be supplied to the Customer’s purchaser/customer with each batch of biomass supplied or sold.

AUDIT REQUIREMENTS

6.1 The Company will appoint competent qualified auditors to conduct audits and assessments of the Customer’s compliance with the relevant Standard(s).

6.2 The Company will ensure that resource and assistance is provided to the Company to allow audit and assessment services to be delivered at a frequency determined by the Company in order for the Customer to maintain confidence in the Customer’s on-going audit

6.3 The Company will issue audit and non-conformance reports, if appropriate, after each audit activity. The Customer shall allow the accreditation body, or its representative, access to any
6.4 The Company reserves the right to conduct an unannounced audit at short notice if required by the applicable Standard setting body or as part of the certification scheme requirements to investigate complaints, or in response to changes, or as follow up on a suspended Customer. In such cases:

6.4.1 the Company shall describe and make known in advance to the Customer the conditions under which these short notice visits are to be conducted, and

6.4.2 the Company shall exercise additional care in the assignment of the audit team because of the lack of opportunity for the Customer to object to audit team members.

6.5 Where prescribed by a relevant Standard, the Customer shall make all necessary arrangements for:

6.5.1 the conduct of the evaluation and surveillance (if required, and as determined by the Company), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and the Customer's subcontractors;

6.5.2 investigation of complaints; and

6.5.3 the participation of observers, if applicable, including the accreditation body, or its representative, for the purposes of witnessing the Company’s audit team performing the audit of the System to determine conformity with the requirements of the Standard;

6.6 Where prescribed by a Standard, the Customer agrees that:

6.6.1 a copy of the audit report and any subsequent certificate or audit result shall be supplied to the Standard setting body and the accreditation body in the agreed format for the particular Standard used;

6.6.2 all documents in relation to the audit shall be made available to the accreditation body/Standard setting body upon request. All documents submitted to the Standard setting body shall be copies of original documents. Documents provided to the Standard setting body will be treated as confidential;

6.6.3 the auditor may be accompanied by other personnel for training, assessment or calibration purposes and this activity may include:

  6.6.3.1 training of new auditors by the Company;
  6.6.3.2 witness audits by accreditation bodies; and
  6.6.3.3 witness audits by the Standard setting body;

6.6.4 the Standard setting body reserves the right to conduct its own audit or visit to a site once certificated in response to complaints or as part of the routine Standard setting body compliance activity to ensure the integrity of the Standard. Such visits may be announced or unannounced. The Standard setting body may contact the site directly in relation to its certification status or for feedback on the Company's performance, or investigation into reported issues.

6.7 Where prescribed by a Standard, the Customer shall grant the Company and the Standard setting body and their respective authorised agents the right at any reasonable time to have access to the Customer’s premises (or to arrange for such authorised representatives to have access to other relevant premises owned or controlled by the Customer or its group companies) for the purpose of inspecting and taking copies of any information, documentation, goods, books and records deemed necessary by the Company or the Standard setting body.

7. APPEALS AND COMPLAINTS

If the Customer wishes to complain or appeal about certification decisions of the Company it shall do so in accordance with the Company’s complaints and appeals processes which may change from time to time and are publicly available and can be provided on request.

8. MATERIALITY (BASIS OF OPINION)

Where the Company provides certification Services, the Company conducts certification through a sampling process to determine if the System meets the Standard(s). Any statement of conformity issued by the Company in the form of reports, certificates or other communications is based on those sampling processes. The Company does not warrant, represent or undertake that these statements mean that all activities are in conformance with the relevant Standard(s) at the time of audit or that subsequent to the audit activity those activities audited will continue to be in conformance with the relevant Standard. The Company undertakes to make all of its customers and end users aware of the foregoing provisions of this Clause. The Company accepts no liability to the Customer in the event that any loss or claim is suffered by the Customer as a result of any finding that the System does not comply with the Standards.