ELEMENT MATERIALS TECHNOLOGY SOUTH AFRICA PROPRIETARY LIMITED

TERMS AND CONDITIONS (SOUTH AFRICA)

1. INTERPRETATION

In these terms and conditions (the "Conditions") (including the Annex where the Company is providing certification Services) the following expressions shall (unless the context requires) have the following meanings:

"Client" means the person, firm or company to whom a Quotation is addressed or for whom any Services are carried out;

"Confidential Information" means 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;

"Company" means Element Materials Technology South Africa Proprietary Limited (Registration Number: 2015/025446/07) or named operating unit thereof;

"Contract" means the contract for the supply of Services comprising the Quotation and these Conditions;

"Export Control Licence" means any public or governmental licence, approval, permit, certificate, letter of authority or similar (whether temporary or permanent), issued directly or indirectly, by any South African or foreign authority which, from time to time, 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 and know-how;

"Intellectual Property Rights" means rights of whatever nature (including patents, inventions, know-how, trade secrets, registered designs, copyrights, database rights, trade marks, service marks, logos, domain names, business names, trade names and design rights) and all registrations or applications to register any of the aforesaid items, together with any renewals, revivals and extensions of any of the aforesaid items;

"Losses" means all losses, liabilities, claims, costs, expenses, damages, actions, awards, penalties and/or fines, obligations and also includes all losses, liabilities, costs and expenses (including legal fees on a full indemnity basis) in relation to or resulting from any demands, claims or proceedings;

"Price" means the price stated in the Quotation, or otherwise agreed with the Client together with all other sums due pursuant to the Conditions;

"Quotation" means the Company's quotation (whether written or oral) which shall be subject to the Conditions save to the extent of any inconsistencies which will be resolved in favour of the terms of the Quotation;

"Report" means any certificate, technical report, non-destructive test or inspection record, drawing, spreadsheet, recommendation, advice or the like issued by the Company in respect of a Service;

"Sample" means any material, item, product or compound supplied by the Client to form the basis of a Test;

"Sanctions Rules" means 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 time to time, including without limit those of the European Union, the United Kingdom, the United States and the United Nations;

"Service" or "Services" means the service(s) (including, but not limited to, Tests, inspection, auditing, certification, consulting and/or calibration services) specified in the Quotation;

"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 capability of the Client to meet a particular Standard; and

"Test" means any testing, analysis, assay, inspection, sampling and sample preparation or the like specified in a Quotation.

2. QUOTATION

2.1 The Quotation constitutes an offer by the Company to provide the Services subject to the Conditions (save to the extent of any inconsistencies between the Quotation and the Conditions which will be resolved in favour of the terms of the Quotation) and is open for acceptance for thirty (30) days only from the date of the Quotation unless previously withdrawn by the Company. Acceptance is based on the receipt of an instruction in writing or receipt of the Sample by the Company.

2.2 **Except in accordance with the Conditions no variation of the Contract will be accepted unless agreed in writing by the Company**.

2.3 The Quotation and the Conditions shall prevail over any terms or conditions contained or referred to in any correspondence, order, documentation submitted by the Client or elsewhere. Further, no condition, statement or representation contained in any advertisement or brochure or in any trade or promotional circular or other literature, nor the terms or conditions of any trade association or other body, or which would or might but for this sub-paragraph be implied or incorporated by custom or trade, usage, negotiations, course of dealing or otherwise shall be deemed to be incorporated in the Contract and all of the same are hereby expressly excluded from the Contract.

3. PRICE

3.1 The Price is based on information available to the Company at the date of the Quotation. If during the period of the Contract there shall be any variation in the cost of materials, labour or otherwise to the Company, the Price may, in the absolute discretion of the Company, be adjusted to take account of such variation.

3.2 In addition to the amount specified in the Quotation, the following shall be payable if appropriate:

3.2.1 any applicable value added tax or sales tax;

3.2.2 package, insurance, freight, travel costs, bank charges, Sample destruction costs, storage charges and disbursements incurred on behalf of the Client, whether on the Company's premises or elsewhere, and to include storage charges on the Company's premises, if any Sample or materials supplied by the Client are not removed within seven (7) days of the date of notification to the Client that they are ready for collection;

3.2.3 insurance incurred by the Company, in its absolute discretion, in respect of any property belonging to the Client in the possession of the Company;

3.2.4 with prior notice, the cost of all sub-contractors employed by the Company unless included in the Quotation;

3.2.5 any additional costs incurred by the Company in accordance with the Conditions; and

3.2.6 any special standards or specifications required for the performance of the Service.

4. PAYMENT

4.1 The Price shall be paid to the Company in full, in cleared funds, without any deduction, set-off or counterclaim within thirty (30) days of the date of the Company's invoice. For the avoidance of doubt, the Price shall be paid free and clear of, and without deduction for and on account of, tax unless the Client is required by law to make such payment subject to the deduction of withholding tax, in which case the sum paid by the Client shall be increased to the extent necessary to ensure that after such deduction or withholding the Company receives an amount equal to Price it would have received had no such deduction or withholding been required.

4.2 Where the Client is required by law to deduct or withhold on account of tax it shall use its best endeavours to obtain from the relevant revenue authorities authorisation to make payment of the sums without such deduction or withholding or, if applicable, at a reduced rate. **The parties undertake to provide all reasonable assistance to each other in obtaining such authorisation and, without prejudice to the generality of the foregoing, will submit any forms and take any such action as may be reasonably necessary or reasonably required by the other party for the purpose.**

4.3 **Time of payment is of the essence to the Contract.** In default of payment within the thirty (30) days, the Company may: suspend any further Services being carried out for the Client; withhold the provision of Reports; alter or withdraw credit terms; and amend terms, prices or service levels. The amount outstanding from time to time shall bear interest (both before and after any judgment) at the rate of 2% per month from the due date for payment until payment in full is made.

4.4 All payments due to the Company shall be payable within the specified time irrespective of whether or not the Client 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 legal representatives acting for a party to a dispute.

4.5 If, in the Company's view, the Client's credit-worthiness deteriorates before completion of the Service, the Company may require payment in full or in part of the Price prior to completion, or the provision of security for payment by the Client in such form as is acceptable to the Company.

4.6 The Company has a general lien (*right to retain or withhold*) on all the Client's property in the Company's possession in satisfaction of any amount owed by the Client to the Company under the Contract, and may deal with it as it sees fit.

5. EXECUTION OF SERVICES

5.1 The Services shall be carried out singly unless prior written instructions from the Client are received for replicates or unless the Company considers replicates are necessary or desirable. **The Company reserves the right to charge for replicates even if the original result is confirmed.**

5.2 The Client shall supply as much information as possible about each Sample and/or Service requirement in order to assist in achieving an efficient service. **Where information relating to the Sample and/or the Service requirements is incorrect and the Company is involved in additional work, the Company reserves the right to charge for such additional work.**

5.3 Unless specific prior instructions in writing are received by the Company, the Services shall be carried out on the Sample in the state in which the Sample is received. **The Company reserves the right to charge for any work required to be carried out to the Sample prior to the performance of any Service.**

5.4 Methods of carrying out the Service and providing the Report shall be at the sole discretion of the Company unless prior instruction in writing is received from the Client specifying a particular procedure which is accepted in writing by the Company. Charges for such special procedures will be agreed between the Company and the Client prior to carrying out the Service.

5.5 A general description of the method used in the performance of the Service shall be given verbally on request. **Where written descriptions of detailed procedures are requested, whether as part of the Report or issued separately, the Company reserves the right to make an additional charge. If the method referenced in the Report represents the end product of development work carried out at the Company's expense, the method shall only be revealed at the discretion of the Company.**

5.6 The Company may, at its sole discretion, undertake to give priority in carrying out a particular Service. A surcharge may be imposed by the Company for the carrying out of priority work. Details of these arrangements will be issued by the Company on request.

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

6. SERVICES SUBJECT OF LEGAL PROCEEDINGS

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.**

7. DISCLAIMER/LIABILITY

7.1 The following provisions of this Condition 7 set out the entire liability of the Company, its employees, agents and sub-contractors to the Client howsoever arising.

7.2 The Company does not exclude or limit its liability (if any) to the Client:

7.2.1 for breach of the Company's obligations arising under the Consumer Protection Act 68 of 2008 where such liability is not permitted to be excluded or limited by contract;

7.2.2 for personal injury or death resulting from the Company's negligence;

7.2.3 for any matter which it would be illegal for the Company to exclude or to attempt to exclude or limit its liability; or

7.2.4 for gross negligence, fraud or fraudulent misrepresentation.

7.3 Except as provided in Condition 7.2, the Company shall not be liable to the Client whether in contract, delict (including negligence), breach of statutory duty or otherwise for any loss of profit, loss of business, loss of market, loss of contract, damage to goodwill, loss of anticipated savings, loss of revenue, loss or damage incurred as a result of third party claims or any indirect or consequential loss howsoever caused.

7.4 Subject to Condition 7.2 and Condition 7.3, the Company's total aggregate liability under the Contract in any calendar year (whether in contract, delict (including negligence), breach of statutory duty or otherwise) arising out of or in connection with the performance or contemplated performance of the Contract or any delay in performance or failure to perform by the Company or otherwise howsoever arising shall be limited to the greater of (i) 125% of the value of the Price paid or payable in that calendar year; or (ii) seventy five thousand Rands.

7.5 Subject to the other provisions of the Conditions, any claim by the Client against the Company shall be made in writing and notified to the Company within three hundred and sixty five (365) days of completion of the Services under the Contract by the Company to the Client.

7.6 All Services are undertaken in good faith, to a reasonable standard of care and on a confidential basis. 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 Client, its staff and on the information submitted to the Company. Save as required by law, no representation or warranty, whether express or implied or otherwise as to the accuracy of a Report is given by the Company. In consequence, all Reports are prepared on the basis that:

7.6.1 there is no responsibility to any person or body other than the Client;

7.6.2 they are not carried out 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;

7.6.3 they are 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;

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

7.6.5 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

7.6.6 the results are final and approved by the Company. **The Company shall be under no liability where the Client has acted on preliminary, unapproved results or advice.**

7.7 All time limits, if any, for the provision of the Services are estimates and no undertaking is given to carry out the Services or to despatch any Report within any period of time. Time of performance of the Services shall not be of the essence to the Contract.

7.8 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Company's reasonable control shall include an Act of God, explosion, adverse weather conditions, flood, earthquake, tempest, fire, accident, war or threat of war, acts or threats of terrorism, sabotage, insurrection, riot, civil disturbance, requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

7.9 Except where the Services are provided to a person who is a consumer (within the meaning of the Consumer Protection Act 68 of 2008), all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.

7.10 Where the Services are provided under a consumer transaction governed by the Consumer Protection Act 68 of 2008, the statutory rights of the Client are not affected by the Conditions.

7.11 The Client acknowledges that the above provisions of this Condition 7 are reasonable and reflected in the price which would be higher without those provisions and the Client will accept such risk and/or insure accordingly.

8. OBLIGATIONS OF CLIENT

8.1 The Client shall provide with each Sample and/or Service a unique purchase order or unique reference or unique authorisation with sufficient detail to allow the Company to identify each Sample (if applicable) and relate it to a specific Quotation and Service and the Company shall be entitled in good faith to rely upon such purchase order or reference provided to carry out the Service.

8.2 The Client may reproduce or replicate any Report but only in its entirety and in the form provided by the Company and the Client shall not, without the written consent of the Company, reproduce or replicate any Report which has been modified from the form provided by the Company.

8.3 **The Client shall be bound to inform the Company in writing prior to the Company carrying out any Service on a Client site or Sample that is of a dangerous or unstable nature and provide instruction on the safe visiting of the site or safe handling of the Sample.** For example, a dangerous or unstable Sample will include but is not limited to radioactive materials, biologically active or hazardous substances, reducing or oxidising agents, volatile organic compounds, materials considered to be toxic, harmful, corrosive, irritant, explosive, flammable, carcinogenic or reproductive hazards or materials that are dangerous to the environment. **To the fullest extent permitted by applicable law, the Client shall indemnify the Company from and against all Losses suffered by the Company, including, without prejudice to the generality of the foregoing, all damage to the Company's property and all claims in respect of injury to or deaths of any of the Company's employees, subcontractors or agents or of any third party, directly or indirectly arising from or in connection with the failure of the Client to inform the Company of the dangerous or unstable nature of a Client site or Sample**

and/or to provide adequate instruction on the safe visiting of the site or the handling of the Sample. Where the Client informs the Company that a Sample is of a dangerous or unstable nature, the Company may, in its absolute discretion, elect not to carry out the Service and to terminate the Contract whereupon the provisions of Condition 13.3 will apply, **save that the Company shall have no liability for its termination of the Contract.**

8.4 Where any aspect of the Service is undertaken on premises not occupied by the Company or under its direct control, it is the responsibility of the Client to ensure that all necessary safeguards are in place and all safety measures taken 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 Client, the Client is also responsible for ensuring that all asbestos has been removed and/or is safely contained in every area to be visited by the Company's consultants during the visit to said premises. **To the fullest extent permitted by applicable law, the Client will indemnify the Company against any consequence of a breach of its obligations under this Condition 8.4.** The Company reserves the right not to commence work if it believes the Client has breached its obligations under this Condition 8.4 and to recover any Losses thereby incurred. Where the Company believes the Client has breached its obligations under this Condition 8.4, the Company may, in its absolute discretion, elect not to carry out the Service and to terminate the Contract whereupon the provisions of Condition 13.3 will apply, **save that the Company shall have no liability for its termination of the Contract.**

8.5 The Client represents and warrants to the Company that it will at all times comply with all reasonable requirements necessary for the issuance of a certificate (where applicable) including but not limited to all statutes, rules, regulations issued by any statutory or other competent authority, all recommendations, codes and similar matters issued by any authority pursuant to which in compliance with which or for the purpose of which the certificate is issued or such other reasonable requirements of the Company as are necessary to enable the certificate to be issued and maintained in force in accordance with the standards reasonably expected of accredited or competent certification.

8.6 The Client represents and 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 subsequently. The Client further warrants that in the event that it discovers that certain information provided is not accurate or complete, it will notify the Company of this as soon as the Client becomes aware of it.

8.7 The Client 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 any breach or negligent performance or failure in performance by the Client of the terms of the Contract;

8.7.2 breach of any law by the Client or the Company in connection with the performance of the Services; or

8.7.3 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).

Notwithstanding any other provision of these Conditions but subject at all times to applicable law that cannot be altered by contract, the Client's liability under this indemnity shall be unlimited.

8.8 Where Services are provided at the premises of the Client, the Client will be responsible for providing a safe system of work for the Company and its employees while providing the Service and the Client shall be responsible for all costs necessarily required in discharging this obligation and, to the fullest extent permitted by law, shall indemnify the Company, its employees, sub-contractors and agents in respect of all Losses suffered as a result of any breach by the Client hereof.

8.9 In addition to any specific Client obligations set out in the Quotation, where Services are provided at the premises of the Client, the Client shall:

8.9.1 provide the Company with necessary access to any Client premises;

8.9.2 ensure that any premises provided by the Client for the provision of any part of the Service is suitable for that purpose;

8.9.3 provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc) relevant to any Client supplied premises; and

8.9.4 provide the Company with any permits required for the performance of the Service.

Additional costs or Losses arising for the Company due to the Client's failure to comply with the obligations in this Condition 8.9 shall be borne by the Client.

9. RISK AND PROPERTY IN RELATION TO TESTS

9.1 Unless stated in the Quotation, Samples are and remain at all times (including, without limitation, whilst at the Company's works and during transportation to and from the Company's works) at the entire risk of the Client who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Client that the charges of the Company do not include insurance.

9.2 Unless expressly stated to the contrary in the Contract, Samples of a stable nature shall be retained for three months from the date of their receipt and then destroyed.

9.3 Where Samples are, 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 such samples are kept before being destroyed.

9.4 Samples shall be returned to the Client only if prior instructions in writing in that regard are received by the Company and the Client shall be charged for all costs associated therewith (including carriage).

10. OWNERSHIP, INTELLECTUAL PROPERTY IN RELATION TO SERVICES

10.1 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 otherwise expressly agreed as part of the Contract.

10.2 Ownership and copyright in the Report shall remain with the Company. Upon the Client discharging all its obligations under the Contract, including payment of the Price, the Client will obtain an irrevocable, royalty-free, non-exclusive licence to use the Report (including the right to sub-licence), subject to the terms of Condition 8.2, this Condition 10.2 and Condition 10.8.

10.3 The Client hereby warrants that it will not use the Report or any other reports, results, or information supplied by the Company for the purposes of advertisement or publication to third parties. Any such issue of the Report or other reports, results or information is permitted under the Contract only with the prior written consent of the Company who shall have the right to increase the Price where it consents to such advertisement and/or publication.

10.4 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 Client.

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

10.6 Intellectual Property Rights, title and interests in all certification mark(s), service mark(s), trade mark(s), other names or logos and copyright works belonging to accreditation bodies or Standard setting bodies shall remain their property, and may only be used by the Client subject to compliance with the requirements of the relevant Standard and rules which are available from the accreditation body or the Standard setting body, including entering into any necessary ancillary licence agreement(s).

10.7 The Company shall be entitled at any time to audit the use of all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, an accreditation body or a Standard setting body, and investigate any potential infringements of Intellectual Property Rights belonging to the Company, an accreditation body or a Standard setting body. The Company reserves the right to substitute or withdraw the right to use any or all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, an accreditation body or a Standard setting body, in the event of non compliance with the relevant terms of use or any ancillary licence agreement(s), or should the Contract be terminated for whatever reason.

10.8 The Client hereby undertakes to abide by any regulations imposed by certification authorities, accreditation bodies, Standard setting bodies, or any government or regulatory authority relating to marks, emblems or logos attached to the Reports or any other documents issued pursuant to delivery of the Services, and in particular the Client acknowledges that where the Company makes use of a Standard setting body logo on a certificate, the Standard setting body logo on such certificate only refers to the Client's compliance with the relevant Standard and does not provide the Client with the right to use the Standard setting body logo, which may only be used by the Client subject to compliance with the requirements of the relevant Standard and rules which are available from the Standard setting body, including entering into any necessary ancillary licence agreement(s).

10.9 The Client shall indemnify the Company against all damages, penalties, costs and expenses 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 Client for the performance of the Services involves the infringement of any Intellectual Property Rights of any third party.

11. DATA PROTECTION

11.1 In exercising its rights and performing its obligations under the Contract, the Client, to the extent necessary, shall at all times comply with the Protection of Personal Information Act 4 of 2013 ("POPIA"). To the extent that any personal information (as defined in POPIA) is processed by the Client, the Client shall at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal information.

11.2 If the Company receives an access request from a data subject who is identified in the personal information then the Client shall provide the Company with all such assistance as the Company may reasonably require to enable the Company to timeously comply with the subject access request.

11.3 Where prescribed by a Standard, both the Company and any accreditation body and any Standard setting body shall be entitled and authorised to process the Client's personal information and business data (so far as is necessary for the purpose of performance obligations of the Company and/or discharge of regulatory or statutory duties by any accreditation body or a Standard setting body) in accordance with POPIA, and any other applicable or equivalent data protection legislation.

12. SUB-CONTRACTING AND ASSIGNMENT

12.1 Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Company shall be entitled, in its absolute discretion, to sub-contract the whole of or any part of the Service.

12.2 The Company may assign, delegate, licence or hold on trust, all or any part of its rights or obligations under the Contract.

12.3 The Contract is personal to the Client which may not assign, delegate, licence, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

13. TERMINATION

13.1 The Client shall not terminate the Contract without the written consent of the Company which may be subject to such terms, as in the Company's absolute discretion, recompense the Company for all loss it may suffer as a result of termination.

13.2 The Company may terminate the Contract and any other contract with the Client forthwith, without prejudice to any other right or remedy available to the Company **and without the Company incurring any liability to the Client**, in the following circumstances, **each of which the Client acknowledges shall constitute material breach by the Client:**

13.2.1 if the Client 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 Client in accordance with a written notice from the Company requiring remedy within the period specified in the said notice;

13.2.2 if the Client fails to make payment of the Price within the specified time;

13.2.3 if the Client 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 or commits any act of insolvency within the

meaning of section 8 of the Insolvency Act 24 of 1936;

13.2.4 if an encumbrancer takes possession, or a receiver or administrator is appointed, over any of the property or assets of the Client;

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

13.2.6 if the Company reasonably considers that any of the events mentioned at Conditions 13.2.3, 13.2.4 or 13.2.5 above is about to occur in relation to the Client and notifies the Client accordingly;

13.2.7 if the Company reasonably considers that providing the Services or dealing with the Client would be in breach of Sanctions Rules, the Client 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 Client does anything which is in breach of, or would cause the Company to be in breach of, Sanctions Rules; and

13.2.8 as provided in Condition 8.3 and Condition 8.4.

13.3 Notwithstanding that the Company terminates the Contract, this shall be without prejudice to the accrued rights and remedies of the parties prior to termination of the Contract and any rights or remedies under the Conditions, which shall remain in force, including the right to suspend all further Services to be made under any other contract with the Client (and in such event the Client shall not be released from any of its obligations to the Company under any other contract) and the right for the Company to receive full compensation for its loss under the Contract or any other contract with the Client.

13.4 On termination of the Contract pursuant to Condition 13.2, any indebtedness of the Client to the Company shall become immediately due and payable.

14. CONFIDENTIALITY

14.1 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.

14.2 Notwithstanding Condition 14.1, a Recipient may disclose Confidential Information which it has received if:

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

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

14.2.3 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

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

14.3 In the event of an information request being made to a Recipient pursuant to any freedom of information legislation or the Promotion of Access to Information Act 2 of 2000 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.

14.4 The obligations of the parties under this Condition 14 shall continue to apply without limit of time.

15. EXPORT CONTROL LICENCE

15.1 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 South African 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 Client undertake to conform to and apply the – from time to time – valid terms of such, end user certificates, Export Control Licences or restrictions.

15.2 The Client 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.

15.3 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 Client 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 Client.**

15.4 Should the Services or any product of the Company be subject to any Export Control Licences or any other South African or foreign governmental or court restrictions, the Client undertakes to conform to and apply the - from time to time - valid terms of such Export Control Licences or restrictions.

16. ANTI-CORRUPTION

16.1 The Client undertakes to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("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 Client shall comply with the Company's Anti-corruption policies as may be notified to the Client and updated from time to time ("Relevant Policies").

16.2 The Client shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of the Contract.

17. GENERAL

17.1 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.

17.2 Nothing in the Conditions shall create or be deemed to create a partnership between the parties.

17.3 The Conditions and the Quotation contain all the provisions which the parties have agreed in relation to the subject matter

of the Contract and supersede any prior written or oral agreements, representations, proposal documentation or understandings between the parties. **The Client agrees that it has not been induced to enter into the Conditions or the Contract by a statement or promise which they do not contain save that the Conditions shall not exclude any liability which the Company would otherwise have to the Client in respect of any statements made fraudulently by the Company.**

17.4 In the event of one or more of the provisions of the Conditions being held by a competent authority to be invalid, illegal, or unenforceable, in whole or in part, the validity, legality or enforceability of the remaining provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

17.5 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.

17.6 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.

17.7 The Quotation and the Conditions do not and are not intended to give any rights or any right to enforce any of its provisions to any person who is not a party to it.

17.8 The Contract shall be governed by and construed in accordance with the laws of South Africa and the Client submits to the exclusive jurisdiction of the South African Courts. This does not restrict the Client's right to submit a complaint against the Company to any other body in terms of applicable law, including consumer laws that cannot be altered by contract.

CERTIFICATION SERVICES ANNEX

Where the Company is providing certification Services the terms of this Annex shall apply.

1. EXECUTION OF SERVICES

1.1 The Company shall not be obliged 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.

1.2 The Services shall be carried out in accordance with procedures designed to ensure that any initial assessment, surveillance or re-certification audit is in compliance with the requirements of the relevant Standard. 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.

2. **PRICE**

2.1 If the Client postpones all or part of the Services with less than thirty (30) working days' notice from the start date that was mutually agreed following acceptance by the Client of the Quotation, the Company reserves the right to either:

2.1.1 charge a fee amounting to the greater of: (i) 25% of the Price; or (ii) the applicable day rate for a relevant employee; or

2.1.2 where the costs and resources cannot be defrayed, charge all or part of the Price as appropriate.

2.2 Should the Client wish to cancel the Services, and without prejudice to the Company's other rights and remedies hereby reserved, the Company shall charge and be entitled to recover either:

2.2.1 a fee amounting to 50% of the Price in question; or

2.2.2 where the costs and resources cannot be defrayed, all or part of the Price as appropriate

plus the cost of any work performed up to the receipt by the Company of the notice of the cancellation, calculated in accordance with the applicable day rate for a relevant employee.

3. OBLIGATIONS OF CLIENT

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

3.1.1 always comply and conform with and fulfil the provisions and requirements of the applicable Standard, including implementing appropriate changes when they are communicated by the Company and within the minimum period specified by the Company;

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

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 advertising, the internet or other documents;

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

3.1.6 not use its certification in such a manner as to bring the Company into disrepute 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 compliance with certification and make these 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 that the certificate 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 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 lose public trust**;**;

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 comply with all agreements and arrangements between the Client and the Standard setting body (if applicable) and all Standard setting body requirements;

3.1.12 inform the Company, without delay, of matters that may affect the Client'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, changes relating to:

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

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

3.1.12.3 contact address and sites;

3.1.12.4 scope of operations under the System; or

3.1.12.5 major changes to the System and processes

and the Client agrees to pay any applicable additional fees and expenses deemed necessary for the Company to assess the impact and maintain confidence in the System;

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 respective websites of the standard setting bodies, or from the Company or from the Standards issuing authority;

3.1.14 comply with any conditions set by the Company for the issue of a Report and recognise that the Company has clear and explicit rights to revise the requirements of certification within the period of validity of the certificate;

3.1.15 acknowledge that initial certification will 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 Standards, rules and regulations of the relevant 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 Client represents and warrants to the Company that, in the event of the issuance 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 To the fullest extent permitted by applicable law, the Client 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 any defects in the Client's products, services or System; and

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

Notwithstanding any other provision of these Conditions, but subject at all times to applicable law that cannot be altered by contract, the Client's liability under this indemnity shall be unlimited.

3.4 The Client acknowledges the authority of the accreditation body and agrees to assist the Company and accede to any reasonable request made by the accreditation body in relation to the certification e.g. witness audits.

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

4. 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 Client's acts, omissions or conduct bring or may bring the Company, the accreditation body, the Standard setting body, or a Standard into disrepute;

4.1.2 the Client 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 Client makes fraudulent misrepresentation or provides the Company with any inaccurate or misleading information, which is not corrected within three (3) working days or immediately on being notified by the Company;

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

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

4.1.6 the Client 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 Client a reasonable opportunity to take corrective action before the suspension or withdrawal takes effect. **In the event of suspension or withdrawal of all or part of a certificate, the Company reserves the right to make public the fact that such action has been taken.**

4.3 In the event the Company is unable to supply certification or is no longer able to continue to supply certification accredited by the relevant accreditation body or otherwise withdraws from supplying certification, the Company will notify the Client within thirty (30) days and the certificates will be suspended within six (6) months after the date of withdrawal.

4.4 In the event that the Company suspends or withdraws a certificate, the Client (including the Client'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 further promotion of the certificate or use of any references to the certificate, including discontinuing use of all advertising matter 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 the Standard setting body from its products, information, website, documents, advertising or marketing or any other materials;

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 all 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 matter if part of 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 a Client's certification has been suspended or withdrawn, and where a product has been supplied with a claim that it complies with a Standard(s) by the Client to a customer/purchaser, the Client shall:

4.5.1 immediately identify all relevant customers/purchasers who are in receipt of, or have ordered, such product, and notify each of such customers/purchasers of the suspension or withdrawal (as the case may be) in writing within three (3) working days (or within such timescales as a Standard may specify) of the suspension or withdrawal, and maintain records of such notification; and

4.5.2 provide such co-operation and information as may be required by the Company or the accreditation body to enable the Company or the accreditation body to verify and confirm that the Client is in compliance with all its obligations to the Company and the accreditation body.

4.6 In the event that the Company withdraws a certificate, the Client (including the Client'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.

5. CONFIDENTIALITY

5.1 The obligations of the parties under this paragraph 5 of this Annex shall apply in addition to Condition 14 (Confidentiality).

5.2 The Client 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 inform the Client, in advance, of any other information it intends to place in the public domain.

All other information, except for information that is made publicly accessible by the Client, shall be considered confidential.

5.4 Where prescribed by a Standard setting body:

5.4.1 the Client shall be required to 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 Client agrees that the Company and/or the Standard setting body shall have the right to use and process any information relating to the Client or otherwise provided by or through the Client including but not limited to any supply base report; 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 Client's purchaser/customer with each batch of biomass supplied or sold.

6. AUDIT CONDUCT

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

6.2 The Client will ensure that reasonable cooperation 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 Company to maintain confidence in the Client's on-going compliance with the relevant Standard(s).

6.3 The Company will issue audit and non-conformance reports, if appropriate, after each audit activity. The Client shall allow the accreditation body, or its representative, access to any part of the audit or surveillance process. This will include the right of access to confidential information. **The Client will not have the right within this Contract to refuse such a request either by the accreditation body, its representative, or the Company.**

6.4 **The Company reserves the right to conduct an unannounced audit at short notice if required by the 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 Client.** In such cases:

6.4.1 the Company shall describe and make known in advance to the Client 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 Client to object to audit team members.

6.5 Where prescribed by a relevant Standard, the Client 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 Client'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 Client 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; and

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 Client 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 Client's premises (or to arrange for such authorised representatives to have access to other relevant premises owned or controlled by the Client 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 Client 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 these 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 conformity with the relevant Standard. The Client 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 Client in the event that any loss or claim is suffered by the client as a result of any finding that the System does not comply with the Standards.**