

Element Materials Technology Warwick Ltd Terms and Conditions of Business January 2013

In these Conditions, unless the context requires otherwise:

"Company" means "Element Materials Technology Warwick Limited". "Contract" means a contract under the terms of which the Company is liable to perform services of any description, "Customer" means a party having the right to enforce the supply by the Company of services of any description under the terms of a contract and any reference to "Tests", "Testing" or "Test Equipment" shall be deemed to include (where the context so admits) any other services provided by the Company.

1. QUOTATION

- (1) Unless withdrawn or otherwise expressly agreed, the Company's quotation will expire 30 days after it is issued. The Company reserves the right to withdraw a quotation at any time.
- (2) A quotation relates to the total programme of work in respect of which it was issued and must not be assumed to be correct in respect of a reduced or different programme
- (3) The Company reserves the right to review and amend quotation prices in the event that any order or part order remains incomplete within 3 months of order placement.
- (4) The Company reserves the right to review and amend the quotation prices where subsequent examination of equipment, documentation, specification or other materials relating to the work order show a difference to those available at the time of the original quotation.
- (5) Budget and Rough Order of Magnitude quotations must be revalidated before an order can be accepted
- (6) The quotation is based on compliance with the associated tests. If non-compliances occur, additional costs will be incurred and will be subject to a separate quotation

2. CONTRACT

- (1) A Contract shall not come into existence until the Company dispatches its written acceptance of the Customer's order, or commences work upon the Customer's order.
- (2) These Terms and Conditions prevail and exclude any other conditions inconsistent therewith even if such other items are submitted separately or purport to supersede terms inconsistent with them
- (3) The Terms and Conditions of a Contract with the Company shall be limited to such as are expressed in writing, excluding all oral expressions and advice.
- (4) Except for agreed sub-contract work, no rights or obligations arising between the parties shall be assigned to any third party without prior written consent of both parties.

3. PRICES

- (1) The Company reserves the right to alter prices without notice. The Company's prices are strictly net and do not include VAT or any other tax.
- (2)
 - (a) All prices quoted by the Company are based on a normal 37 hour working week. Normal daily working hours may vary between individual Company sites and locations and are available upon request.
 - (b) The Company reserves the right to charge additional fees, if the Customer request that the Contract be completed within a specific time schedule which involves the Company working longer than a normal working day. Overtime rates applicable at the time shall be made available to the Customer upon request.
- (3) If the Company is requested to arrange transportation by and on behalf of the Customer, the Company shall not be liable for any loss, cost or claim suffered by the Customer as a result of such arrangements. Collection and delivery of test specimen is excluded from the Companies scope of supply unless otherwise stated.
- (4) All prices are in UK Sterling unless otherwise stated.
- (5) The prices quoted only apply if all items detailed in the quotation are ordered. If individual items are selected from the quotation, the Company reserve the right to withdraw the original quotation and re-quote based on the reduced requirements.

4. PAYMENT TERMS

- For Customers with credit accounts with the Company, the Company invoices are due for payment not later than 21 days from the date of the invoice. In the event of non-payment after 7 days of the due date the Company may automatically withdraw all discounts as declared within the Company's quotation. When payment of any of the Company's invoices are overdue, the Company reserves the right without prejudice to any of its other rights to:
- (a) suspend its performance of the Contract and/or any other Contract then subsisting between the Company and the Customer until the invoice is paid and/or
 - (b) debit and recover from the Customer interest on the amount overdue at 2% over the base lending rate of NatWest Bank plc, from the due date of payment of invoice until payment.
 - (c) The Company shall have lien over any Customer's property in the Company's possession, until full payment of outstanding amounts have been made
 - (d) The Company shall have the right to withhold delivery of any test reports, certificates and/or test results to the Customer regardless of their relationship to the overdue invoice
 - (e) For Customers without credit accounts, pre payment will be required
 - (f) Third party test and approval agency fees will be invoiced and paid for up front

5. TIME FOR COMPLETION

- (1) The time allowed for the completion of a Contract shall be as per the Company's written acceptance of the order, or from the date of receipt of the Customer's goods for Testing, whichever shall be the latter.
- (2) Estimates/quotations of times for completion are given in good faith but not guaranteed.
- (3) The Company reserves the right to invoice up to the value of work completed for partially completed Tests where a period of 7 days is exceeded from the date of commencement of Test and completion of Test
- (4) The Company reserves the right to invoice individual line items as detailed on our quotation upon completion of the itemised service.

6. GOODS FOR TEST, JIGS AND FIXTURES

- Goods to be tested by the Company and jigs, fixtures and Test Equipment delivered to the Company by the Customer in connection therewith, shall:
- (a) be delivered to the Company ready for Test or use, compatible with the Company's equipment and procedures and without risk of loss, damage or injury to the Company's facilities or staff
 - (b) remain at the Customer's risk, while in the possession of the Company, and it is the Customer's responsibility to maintain adequate insurance cover.
 - (c) be collected by the Customer, after Test, within 30 days of the date of issue of the Company's report/test certificate, in default of which the Company shall have discretion as to their disposal

7. CUSTOMER'S WORK AND EQUIPMENT

- (1) Where the Contract provides that work shall be performed with the Customer's equipment and/or by the Customer, or its agent, no liability shall attach to the Company in relation to such work and its consequences, whether as regards to Test results or otherwise, and the Customer shall indemnify the Company against any adverse effect suffered by the Company, its servants or agents as a result.

- (2) The Company accepts no responsibility for undertaking specific handling, storage, treatment or transportation measures required for any reason including but not exclusively the value, fragility, security, confidentiality of the Customer's specimen and equipment unless specifically declared by the Customer and agreed in writing by the Company.
8. **FITNESS FOR PURPOSE**
The Company's responsibility and liability shall be limited to the performance of the Test in accordance with the Order Acknowledgement and the Company's standard operating procedures.
9. **SITE SECURITY**
The Company's premises are a designated security area and hence:
(a) The Company reserves the right to refuse admission to the premises
(b) Unless otherwise agreed in advance by the Company, one visitor per Customer only may be admitted, on request, to witness Tests carried out for that Customer
(c) Visitors to the premises shall conform to the Company's regulations and procedures
10. **CANCELLATIONS, POSTPONEMENTS AND ORDER AMENDMENT**
(1) All direct and unrecoverable costs relating to materials, hire, subcontractors and carriage costs incurred by the Company relating to any order cancelled or postponed at any time by the Customer will be charged to the Customer in full.
(2) In the event of the Customer cancelling or postponing any order by giving less than 10 working days notice prior to the agreed commencement date, the Company may automatically deduct all discounts as declared within the Company's quote.
(3) Where a customer fails to provide notification of order cancellation or postponement in writing to the Company at least 10 working days before the scheduled start date for the Test or if the Company's performance of a Contract is interrupted or hindered due to non arrival, late delivery, specimen failure, or extended setting-up time of the Customer's test specimens or equipment, other than the default of the Company, the Customer shall be liable for:
(a) a pro rata charge as per the Company's quotation for the work done up to the time of failure (including set-up time, materials, hire charges and all other unrecoverable expenses)
(b) a charge for any repeat testing required as a result of the failure (including additional set-up time as required)
(c) all unrecoverable direct costs relating to materials, hire, subcontractors, storage and carriage incurred by the Company
(d) a charge to cover lost productivity for the balance of the day on which interruption of the Contract occurred and (unless the Company is able to utilize lost capacity with alternative test programmes) for up to three days thereafter at a fixed per diem rate based on 75% of the quoted day rate
(4) A significant amount of pre-test preparation is required by the Company e.g. technical evaluation, estimating, planning, administration etc therefore the Company may apply a de minimus £250 against order cancellation applied by the Customer, other than in such cases where the order is re-issued within 30 days as a replacement order for the same programme of work.
11. **LIMITATIONS OF LIABILITY**
The Company's liability in relation to a Contract shall be limited to the production of the test report as detailed in the order and to the limit of the value of the order. Hence, except where negligence on the part of the Company is shown to have resulted in the death of, or bodily injury to, any person, the Company shall not be liable for consequential loss of any kind whatsoever and wheresoever suffered by the Customer.
12. **NOTIFICATION OF HEALTH AND SAFETY RISKS**
The Customer shall accept responsibility for notifying the Company of any actual or potential health and safety hazards relating to the Customer's Test Specimen and arising as a result of the Company performing the contract. The Customer shall accept full responsibility for appropriate safety labelling pertaining to the Test Specimen provided.
13. **CONFIDENTIALITY**
(1) The Customer shall not by virtue of this contract gain any rights in any information, data or intellectual property owned, or partially owned by the Company, and used in the execution of this contract. All such information shall be treated as confidential by the Customer and shall not be divulged to any third party without written consent from the Company.
(2) All information provided by the Customer to the Company in pursuant of this Contract shall be treated as confidential with the exception of the following:
(a) information that was already known to the Company at the time of the disclosure
(b) information that is public knowledge or subsequently becomes public knowledge other than by breach of this Contract
(c) information, or any part thereof, that may need to be disclosed to regulatory or accreditation bodies in accordance with quality, accreditation and/or certification rules
14. **THIRD PARTY RIGHTS**
Where information, instruction or guidance received from the Customer results in any assertion by, or on behalf of, a third party that the Company has infringed any right of that party, the Customer shall indemnify the Company against all costs, direct or indirect, incurred by the Company as a result.
15. **INSOLVENCY**
If the Customer goes into liquidation, makes an arrangement with its creditors, commences winding up or if a receiver or administrator is appointed for any part of its undertaking, the Company may elect to treat the Contract as immediately terminated, without prejudice to rights to recover from the Customer such a part of the Contract price in proportion to the work carried out under the Contract including any expenses incurred in relation to it.
16. **FORCE MAJEURE**
The Company shall be under no liability to the Customer in the event that its performance of the Contract is affected wholly or partially by anything that is beyond our reasonable control. These include restrictions imposed by a Government or other competent authority, industrial disputes of any kind (whether or not involving our employees), civil disorder, national or local emergency, Acts of God or acts/omissions of other persons or bodies for whom we are not responsible.
17. **WAIVER**
The failure of either party to insist upon the strict performance of any of the terms and conditions of the contract shall not be construed as a waiver of any such term or condition and shall in no way affect the right to enforce such provision later on.
18. **CONSTRUCTION AND ARBITRATION**
Any dispute arising between the Company and the Customer in connection with the Contract shall be referred before a single arbitrator appointed by the parties or failing agreement on such appointment, by the President of the Law Society of England, on application of either party, and the Arbitration Act 1950. Contracts with the Company shall be construed in accordance with the law of England.