

ELEMENT MATERIALS TECHNOLOGY

TERMS AND CONDITIONS (US)

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 in this sub-condition) shall apply to all contracts for the supply of testing, calibration and/or other services ("**Services**") carried out by BM TRADA Certification North America Inc. ("**Company**") providing the services contemplated therein to the customer ("**Customer**").
- 1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in 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-

property delivered by Customer to the Company in relation to the Contract. Under no circumstances will the Company be responsible for any additional costs or damages, including consequential, special, indirect, or incidental damages and indirect costs or losses, resulting from destruction or loss of the Customer's property.

- 5.4 When testing, analysis or other services are carried out, the Company shall not be liable in respect of any costs or losses resulting from damage to or destruction of any property belonging to the Customer unless the Customer notifies the Company in writing before delivery 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 and the Customer's sole and exclusive remedy for damage to or destruction of the Customer's property is limited to the lesser of:

5.4.1 the value of Customer's property; or

5.4.2 the cost of the Services performed on the damaged or destroyed 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 as part of the Services) back to the Customer after performing Services relating to that property. The Company may use any method of delivery that it reasonably decides and will do so as the agent of the Customer and will not have any liability in respect of any such item so delivered. The Company may at its discretion instruct any person delivering such property to the Customer to invoice that Customer directly in respect of that delivery and the Customer shall make any and all claims for property damaged in transit directly and solely against such delivery company or other person.

- 6.2 Unless specifically instructed to the contrary in writing by the Customer, the Company reserves the right to properly dispose of Customer's property after completion of the Services provided that the length of time Customer's property is kept after completion of the Services before being destroyed will be at the absolute discretion of the Company. The Company reserves the right to invoice the Customer for any 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 such property is kept before being destroyed.

7. Title & Security

For the purposes of this condition 20, "**Data Protection Laws**" shall mean (a) 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 (b) 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 (c) any federal, state, local, international or other applicable laws, rules or regulations governing the use and protection of data..

- 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; provided that the US Data Protection Laws shall be controlling should there be a conflict between any Data Protection Laws and thereafter the GDPR shall have priority.
- 20.2 The Customer agrees not to provide or otherwise make available Personal Data to the Company, other than business contact information

CERTIFICATION SERVICES ANNEX

Where the Company is providing certification Services the terms of this Annex shall apply. In the event of a conflict between the Terms and Conditions and this Annex, 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 have the following meanings 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 capability of the Customer to meet a particular Standard.

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 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 AND PAYMENT

- 2.1 The Consideration is quoted (and amended from time to time) for the Services agreed to be supplied pursuant to the Contract on the assumption that the information supplied by the Customer is accurate and complete.
- 2.2 The Consideration includes the cost of audit services and the use of the BM TRADA logo and, where agreed, the accreditation body logo.
- 2.3 Expenses and disbursements may be charged separately in accordance with the quoted terms.
- 2.4

- 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 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 Customer within thirty (30) days and the certificates will be suspended ipso facto within six (6) months after the date of withdrawal.
- 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