

ELEMENT MATERIALS TECHNOLOGY

TERMS AND CONDITIONS (KINGDOM OF SAUDI ARABIA)

1. Formation of Contract

1.1 These Terms and Conditions

- 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 for delay in performing, or failure to perform, any obligation under the Contract if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, riot, accident, terrorism, explosion, strike or labour dispute, any law, or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially 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 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 Contracts (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 receiving any request, complaint or communication relating to the Data Controller's obligations under the Data Protection Laws:
(a) notify the Data Controller as soon as reasonably practicable;
(b) assist the Data Controller by implementing appropriate technical and organisational measures to enable the Data Controller to comply with 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-condition 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, it being acknowledged that the Data Controller consents to the appointment of sub-processors who may from time to time be engaged by the Data Processor who in each case are subject to terms between the Data Processor and the sub-processor which are no less protective than those set out in this condition 20, provided that the Data Processor

