

ELEMENT MATERIALS TECHNOLOGY
ELEMENT GEOTECHNICAL TESTING (S) PTE. LTD.
TERMS AND CONDITIONS

- 1. Formation of Contract**
- 1.1

LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF CONTRACT; LOSS OF USE; LOSS OR CORRUPTION OF DATA OR INFORMATION; EX GRATIA PAYMENTS; LOSS OF GOODWILL; OR

8.3.2 ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES, FINES, PENALTIES OR EXPENSES; OR PURE ECONOMIC LOSS.

8.4 SUBJECT TO CONDITIONS 8.3

LIABILITY TO THE CUSTOMER IN CONTRACT, TORT (INCLUDING CLAIMS FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE GREATER OF (i) **\$10,000** OR (ii) THE CONSIDERATION FOR THE SERVICES PAYABLE EACH YEAR UNDER THE CONTRACT THAT ARE SUBJECT TO THE CLAIM. Save in the case of fraud or fraudulent concealment by the Company, the Company shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless:

8.4.1 the Customer notifies the Company in detail and in writing of the alleged basis for the claim within two (2) months of the Customer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and

8.4.2 the Company is permitted to inspect any and all property with respect to which the Services are claimed to have been

8.5 Except where the Services are provided to a person who deals as a consumer (within the meaning of the Unfair Contract Terms Act (Chapter 396)), all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.

8.6 The Customer acknowledges that the provisions of this condition 8 are reasonable and reflected in the price which would be higher without those provisions and the Customer will accept such risk and/or at its own costs insure accordingly.

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

8.7.1 breach of any law by the Customer in connection with the performance of the Services;

8.7.2 any claim threatened or made against the Company by any third party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of the Company) to the extent such claim is in excess of the Consideration paid for the Services under the Contract that are subject to the claim; or

8.7.3 any claims arising as a result of any misuse or unauthorized use of any Reports issued by the Company or any Intellectual Property Rights belonging to the Company (including trade marks) pursuant to this Contract.

Notwithstanding any other provision of these Terms and Conditions, the Customer's liability under this indemnity shall be unlimited.

8.8 Nothing in these Terms and Conditions limits or excludes the liability of the Company for:

8.8.1 death or personal injury resulting from negligence; or

8.8.2 liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or

8.8.3 any other matter which may not be limited or excluded by law.

8.9

8.9.1 The Customer shall be liable for and shall indemnify the Company against any loss, expense, costs, damages, liability or claim whatsoever in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or by reason of the performance of the Services, unless the same is shown to be due solely to any negligent or wilful act of the Company or of any person for whom the Company is responsible.

8.9.2 The indemnity provided by the Customer under condition 8.9.1 shall include any damages or compensation payable at common law or under any statute in respect of or in consequence of any accident, illness or injury to any workman or other person in the employment of the Company or any subcontractor, save and except g0 G(n)4(y)-275.45 6(e3.10.000008871 0 595.32 841 nBT/F1 8.04 Tf1 0 0 1 135.74 191.18 Tm0 g0 G{a)4(n)4(y)7()-527(p)4(dmu2 841 nBT20

applicable health and safety regulations, and save as otherwise agreed in writing between the parties or where identification of asbestos is part of the scope of the Services to be provided by the Company to the Customer, the Customer must ensure all asbestos has been removed and/or is safely contained in every area to be visited by the Company's personnel during the visit to said premises.

- 11.3 In addition to any specific Customer obligations set out in the Quotation and the provisions of sub-condition 11.2, where Services are provided at the premises of the Customer, the Customer shall: (i) provide the Company with necessary access to any Customer premises; (ii) ensure that any premises provided by the Customer for the provision of any part of the Service is suitable for that purpose; (iii) provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc.) relevant to any Customer supplied premises; and (iv) provide the Company with any permits required for the performance of the Service.

12. Court and Other Proceedings

- 12.1 In the event that the Customer requires the Company to present the results or findings of Services carried out by the Company in witness statements, court hearings or other legal proceedings, the Customer shall pay to the Company such costs and fees for such presentations and the preparation thereof as the Company may charge to customers generally from time to time for such services and the Customer shall be liable for such costs in addition to the Consideration
- 12.2 In the event that the Company is required by a party other than the Customer to present the results or findings of Services carried out by the Company for the Customer in any legal proceedings relating to the Customer, the Customer shall pay all costs and fees arising from any services which the Company is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing. The Customer shall pay all such costs, whether or not the Customer has paid all outstanding Consideration under the Contract and whether or not the Company has closed the

by the Customer and agreed to in writing by the Company. The Customer agrees and warrants that at the time of each disclosure of Personal Data to the Company, the Customer has obtained all necessary consents from the relevant individuals to disclose their Personal Information to the Company and the Company to collect, use and/or disclose such information for the Services or any other activity or purpose mutually agreed in writing at the relevant time.

20.3 Where Personal Data is Processed by a party under or in connection

Data Processor

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 (such

Data Controller

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, Customer shall not transfer any Personal Data provided by Company out prior written consent;

20.3.2 upon becoming aware of any unauthorised access, collection, use, disclosure, copying, modification, or disposal of Personal Data provided by or on behalf of the Data Controller under this Contract **Personal Data Breach**

- (a) notify the Data Controller without undue delay; and
- (b)

foreign governmental or court restrictions, the Customer undertakes to conform to and apply the from time to time valid terms of such Export Control Licences or restrictions.

24. Anti-Corruption

24.1 The Customer undertakes to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Prevention of Corruption Act (Chapter 241), Penal Code (Chapter 224), the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 ("**Anti-Corruption Laws**") and that it shall not do, nor omit to do, any act that will lead to the Company being in breach of any of the Anti-Corruption Laws. The Customer shall:

- 24.1.1 comply with the Company's Anti-corruption policies as may be notified by the Company to the Customer and updated from time to time;
- 24.1.2 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;
- 24.1.3 promptly notify the Company (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract);

25. Notices

All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and forty eight hours after posting if posted 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.

26. No Waiver

No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

27. Governing Law

- 27.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of Singapore.
- 27.2 Each party irrevocably agrees that the courts of Singapore shall have