

These terms and conditions, and any proposal, price list or schedule, quotation, or acknowledgement, and all documents incorporated by reference therein, hereinafter collectively the Proposal, binds Experitec, Inc., hereinafter Supplier, and the buyer, hereinafter Buyer, and constitutes the entire agreement (Agreement) between Buyer and Supplier for the provision of services (Services) and/or the sale of hardware, software, and/or other products (Goods) including (except as provided in section 17) firmware incorporated therein.

**1. Acceptance:** Acceptance of this agreement by Buyer within 30 days of the date hereof (or such longer period as Supplier shall, in its sole discretion, agree to in writing) creates a contract between Supplier and Buyer for the performance of Services and the sale of Goods, each as particularly described in the Proposal. By accepting this agreement within the requisite time period, Buyer agrees to accept all of the terms and conditions of this Agreement. To the extent Buyer's purchase order or any other statement of Buyer contains any terms or conditions in addition to or different from the terms of this agreement, such terms and conditions are hereby rejected by Supplier and hereby waived by Buyer and such terms and conditions shall not affect this agreement nor be binding upon Supplier absent an express written statement by Supplier to the contrary. This Agreement constitutes the entire agreement and understanding between the parties with respect to the Services and the delivery of the Goods and supersedes any other negotiations, agreements and representations between the parties, written or oral. No modification of this agreement shall be of any force or effect unless in writing and signed by Supplier. **IN THE EVENT OF ANY CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND THE PROPOSAL, THE TERMS OF THE PROPOSAL SHALL GOVERN. IN THE EVENT OF ANY CONFLICT BETWEEN ANY CHANGE ORDER AND THESE TERMS AND CONDITIONS OR THE PROPOSAL, THE TERMS OF THE CHANGE ORDER SHALL GOVERN.**

**2. Prices:** Unless otherwise specified by Supplier, Supplier's price for the Goods and/or Services shall remain in effect for thirty (30) days after the date of Supplier's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods and/or provision of Services pursuant to Supplier's standard order processing procedures is received and accepted by Supplier within such time period. If such authorization is not received by Supplier within such thirty (30) day period, Supplier shall have the right to change the price for the Goods/Services to Supplier's price in effect for the Goods/Services at the time the order is released to final manufacture. Prices for Goods do not cover storing, installing, starting up or maintaining Goods unless expressly stated in Supplier's quotation. Notwithstanding the foregoing, the price for Goods/Services sold by Supplier, but manufactured by others, shall be Supplier's price in effect at the time of shipment to Buyer.

**3. Scheduling:** Buyer understands that any product design services to be performed by Supplier are unique, extremely complex and involve a great degree of Buyer/Supplier interaction. The schedule for completion of the Services and delivery of the Goods set forth in the Proposal is a good faith estimate of Supplier. The time actually required to complete the Services and deliver the Goods will be subject to Buyer availability. Buyer's timely delivery of information described in the Proposal or otherwise requested by Supplier, the accuracy of such information, unforeseen design issues, design changes and modifications requested by Buyer pursuant to Change Orders, and other matters which generally effect product choice or product design services. Supplier shall use all commercially reasonable efforts to meet all schedules set forth in the Proposal. Supplier shall have no liability to Buyer or any other party for any loss or damage arising out of any Service or Good which is provided later than designated in the Proposal.

**4. Delivery:** All shipping dates are approximate and are based upon Supplier's prompt receipt of all necessary information from Buyer to properly process the order. Unless otherwise provided, Supplier will select the method of transportation and delivery for Goods. Payment for delivery will either be freight collect or prepaid by Supplier and charged to Buyer as a separate item on their invoice. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, and regardless of how price was quoted, legal title to the Goods and risk of loss thereto shall transfer to Buyer upon delivery to the freight carrier at the shipping point. Buyer's sole remedy for lost Goods, damage caused during shipment or any delay attributable to shipment shall be an action against the carrier. Buyer agrees to hold Supplier harmless against any and all penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' fees, of whatever nature arising out of or in connection with the shipment of Goods.

**5. Documentation:** Supplier shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Supplier, they shall be provided to Buyer at Supplier's price then in effect. Data/documentation marked as confidential or proprietary may not be reproduced or used for any purpose other than the purpose for which it was provided and may not be disclosed to third parties without the prior written permission of Supplier.

**6. Force Majeure:** Supplier shall not be liable for delays in performance or for non-performance due to failure or interruption of computer or telecommunication systems, acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Supplier's reasonable control. In the event of such delay, the time for performance or delivery shall be extended by a period of time reasonably necessary to overcome the effect of the delay.

**7. Normal Working Hours – Emergency Calls:** Supplier service personnel will travel to and from their respective offices to the job site during normal working hours only. Any such travel outside normal working hours shall be billed at the applicable overtime rate. All maintenance tasks and non-emergency repair or replacement will be performed during Supplier's normal working hours. Supplier may charge the Buyer for emergency calls made at the Buyer's request where no defect is found.

**8. Change Orders:** In the event that Buyer requests any modifications to the Services or to the type or number of Goods, Supplier shall, if commercially reasonable, prepare and deliver to Buyer a Change Order Proposal describing such modifications and the changes in the Services and/or Goods necessary to effect such modifications (a "Change Order"). The Change Order will also set forth the additional Payments, if any, and the basis upon which additional Payments will be computed and an estimate of the revised schedule for completion of the Services and delivery of the Goods. After receipt of a Buyer request, verbal or written, for modifications to the Services or to the type or number of Goods, Supplier may elect not to continue or complete the Services or deliver Goods until Supplier receives a written authorization to proceed with the additional scope of work. The execution of the written authorization required hereunder by Buyer shall constitute authorization from Buyer for Supplier to proceed with the Services and delivery of the Goods as modified by the Change Order and Buyer's consent to the increase or decrease in the Payments and the revised schedule set forth in the Change Order.

**9. Termination and Suspension by Buyer:** Buyer may return, terminate or suspend its order for any or all of the Goods or Services covered by the Agreement only upon Supplier's written consent or pursuant to Supplier's applicable policy or practices covering such termination or suspension. Should Buyer request modification, return, termination or suspension, Supplier is entitled to payment for all costs and expenses incurred for work, materials, and Goods rendered unnecessary or unusable. Additionally any return of Goods is subject to a minimum of a 25% restocking charge. Supplier may, at Supplier's sole discretion, terminate the Agreement without liability to Buyer if Buyer (i) fails to meet its obligations identified in the Agreement or these terms and conditions, (ii) becomes insolvent or bankrupt, or (iii) withdraws such quantity, models or types of equipment on which services are performed and, Supplier, in its reasonable judgment, determines that it is no longer economically reasonable for Supplier to continue to provide service to the remaining equipment based upon the then current pricing and contractual terms.

**10. Limited Warranty:** Subject to the limitations contained in Section 12 and except as otherwise expressly provided herein, the only warranty provided by Supplier for the sale of Goods are those provided by the manufacturers of the Goods to the extent such warranties may be passed on or assigned. Supplier warrants to Buyer that services provided will be performed by trained personnel using proper equipment and instrumentation for the service provided. All Services work is warranted for 12 months from the date of completion. During the warranty period, if within five (5) days after Buyer's discovery of any warranty defects, Buyer notifies Supplier thereof in writing, Supplier shall, at its option, repair, correct, or refund the purchase price for that portion of the Services or goods provided in connection with such Services found by Supplier to be defective. **THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS AND SERVICES REGARDLESS OF WHETHER THE GOODS AND SERVICES WERE MADE PURSUANT TO CLIENT'S SPECIFICATIONS OR WHETHER THE GOODS AND SERVICES ARE USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS.**

**11. Indemnification:** Subject to the limitations contained in Section 12 Buyer shall indemnify and hold Supplier harmless from loss, damage, liability or expense (including reasonable attorney's fees) resulting from damage to property, or injuries, including death, to the extent caused by a negligent act or omission of the Buyer, its agents or employees. Such indemnification shall be reduced to the extent attributable to others. The indemnification obligations under this section shall survive the termination or expiration of an order or contract between the parties.

**12. Limitation of Remedy and Liability: SUPPLIER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT OR REFUND OF PURCHASE PRICE UNDER THE LIMITED WARRANTY CLAUSE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SUPPLIER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SUPPLIER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE**

**LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED INCLUDING WITHOUT LIMITATION FOR CAPITAL AND CLAIMS OF BUYER'S CUSTOMERS.**

**13. Patents:** The Supplier does not warrant that the buyer shall be free from any rightful claim of third persons for patent infringement except to such extent as it passes on the manufacturer's warranty regarding patents that it receives with the purchase of Goods to the extent such warranty may be passed on or assigned.

**14. Taxes:** Any tax or governmental charge payable by the Supplier because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Supplier's option be billed to and paid by Buyer unless the Buyer provides Supplier with a tax exemption certificate acceptable to Supplier and the taxing authority. The foregoing shall not apply to taxes based upon Supplier's net income.

**15. Terms of Payment:** Unless otherwise agreed by Supplier, terms are F.O.B. shipping point, net 30 days from date of Supplier's invoice. Freight charges may include shipping and handling charges, and Buyer shall pay all such charges. Payment of invoices is not subject to unilateral discounting or reductions by Buyer. If any payment owed to Supplier hereunder is not paid when due, it shall bear interest, at a rate to be determined by Supplier which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is received. Supplier shall have the right, among other remedies and without waiving any claims or incurring any liability, to defer shipments, to terminate the Agreement, to suspend further work in progress under this and/or other agreements with Buyer, and to require security in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorneys' fees.

**16. Security Interest:** Supplier hereby reserves to itself and Buyer further grants unto Supplier a security interest in and to all Goods to be shipped to the Buyer hereunder, and the proceeds thereof, to secure to Supplier the full payment of the purchase price. Buyer agrees, upon Supplier's request, to execute such UCC financing statements reflecting Supplier's security interest. No Goods furnished by Supplier shall become a fixture by reason of being attached to real estate. Buyer's failure to pay any amounts when due shall give Supplier the right to possession and removal of or to render unusable the equipment.

**17. Software and Firmware:** Notwithstanding any other provision herein to the contrary, Supplier or applicable third party owner shall retain exclusive title to its respective firmware and software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty free license to use firmware incorporated into the Goods. Buyer's use of certain firmware (as specified by Supplier) and all other software shall be governed exclusively by Supplier's and/or third party owner's applicable license terms.

**18. Buyer Supplied Data:** To the extent Supplier has relied upon any specifications, information, representation of operating conditions, or other data or information supplied by Buyer to Supplier in the selection or design of the Goods and the preparation of Supplier's quotation, and the Data is inadequate or inaccurate, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

**19. Hiring of Employees:** Buyer agrees that during the execution of the Services by Supplier, and for a period of twelve (12) months after completion of the Services, Buyer will not directly or indirectly, individually or as a shareholder, investor, advisor, partner, member, manager, owner, director, officer, employee, consultant or agent of any corporation, partnership, limited liability company, or any other entity (a) solicit, encourage or have contact with any of Supplier's employees for the purpose of encouraging them to end their employment with Supplier; (b) hire any employee of Supplier; (c) solicit, encourage or have contact with any of Supplier's contractors or their employees for the purpose of encouraging them to end their relationship with Supplier; or (d) hire any Supplier contractor or employee of a Supplier contractor. If Buyer breaches this Section 19, in addition to any and all other remedies available to Supplier in law or in equity, Buyer shall pay as damages, and not as a penalty, \$125,000 for each breach. In addition, Buyer agrees that in the event Supplier institutes or becomes involved in any action to enforce or defend this Section 19, Supplier shall be entitled to recover from the Buyer its reasonable attorneys' fees and costs related to such action.

**20. Relationship of the Parties:** The relationship of the parties shall be that of independent contractors and not as partners or joint ventures. Each party is, and is intended to be, engaged in its own and entirely separate business.

**21. Buyer Responsibilities:** Buyer shall provide Supplier ready access to the site where services are to be performed and adequate workspace and facilities to perform same as provided in these terms and conditions. Buyer agrees to allow Supplier to stop and start equipment as necessary to fulfill the terms of the Agreement. Buyer shall not require Supplier or its employees, as a condition to site access or otherwise, to further agree or enter into any agreement which waives, releases, indemnifies or otherwise limits or expands any rights or obligations whatsoever. Any such agreements shall be null and void. Buyer shall inform Supplier, in writing, at the time of order placement, of any known hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos containing materials, and shall provide Supplier with any applicable Material Data Safety Sheets regarding same. Any losses, costs, damages, claims and expenses incurred by Supplier as a result of Buyer's failure to so advise Supplier shall be borne by Buyer. Buyer personnel shall cooperate with and provide all necessary assistance to Supplier. Supplier shall not be liable or responsible for any work performed by Buyer.

**22. Notices:** All notices and other communications given hereunder shall be in writing and deemed to have been given when (i) personally delivered, (ii) one business day after delivery to a nationally recognized overnight courier service, (iii) upon the written confirmation of receipt following the transmission of a teletype or (iv) three days after being mailed by certified mail, postage prepaid, to the addresses of Supplier or Buyer as set forth in the Proposal or to such other addresses as either party may request by notice given in accordance with this paragraph.

**23. General Provisions:** (a) Buyer shall not assign its rights or obligations under the Agreement without Supplier's prior written consent (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action as accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Supplier. (e) The Agreement is formed and shall be construed, performed, and enforced under the laws of the State of Missouri. (f) **UNLESS OTHERWISE SPECIFICALLY PROVIDED IN SELLER'S QUOTATION, GOODS AND SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS.** Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability. (g) If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed omitted without affecting the validity of the remainder of the Agreement (h) Any failure by either party to enforce any provision of this agreement or of any order shall not constitute a waiver of the provisions or prejudice the right of either party to enforce the provision at any subsequent time.