

# Experitec, Inc.

## STANDARD TERMS AND CONDITIONS

### Introduction

Experitec, Inc., hereinafter "Experitec", is pleased to have the opportunity to provide our products and services. These terms and conditions along with the attendant documents, to which these terms and conditions are incorporated and attached, constitute our complete offering. If there is a conflict or disagreement between the terms of such attendant documents and these terms and conditions, these terms and conditions shall control. Experitec reserves the right to reject any order or counter offer in its sole discretion. Experitec shall not be bound by any terms which are additional to or inconsistent to this and the attendant documents and which may appear in the Client's purchase order or other communication from the Client unless such terms are expressly agreed upon in writing by Experitec.

Unless changed by Experitec, these Terms and Conditions shall apply to this and all future transactions between Experitec and Client.

### 1.0 Definitions

"*Straight Time*" shall mean from 8:00 a.m. to 5:00 p.m., on regularly scheduled workdays, Monday through Friday excluding Holidays.

"*Straight Time Rate*" shall be the rates shown in the accompanying quotation. Such rate may be increased or decreased from time to time by Experitec in its sole discretion upon giving Client 30 days notice.

"*Overtime*" shall mean hours worked over eight (8) hours per day or hours worked outside of the Straight Time Monday through Friday, and all hours worked on Saturday or Sunday. Overtime worked from Monday through Saturday is billed at 1.5 times the Straight Time Rate. Overtime worked on Sunday is billed at 2.0 times the Straight Time Rate.

"*Holidays*" shall mean hours worked on designated Experitec holidays which will be invoiced at 2.0 times the Straight Time Rate.

"*Emergency Call-Out*" shall mean Clients' requests for service on Holidays, Weekends or upon giving less than 24 hours notice.

### 2.0 Travel and Living Expenses

Travel away from an employee's normal Experitec base (20 miles or greater) will incur travel time charges along with travel and living expenses which shall be paid by the Client. Travel time will be billed at the prevailing Straight Time, Overtime, or Holiday rate as applicable. Travel expenses, including but not limited to airline tickets, rental cars, and personal automobile mileage, and living expenses including but not limited to hotel, meals, telephone, and laundry, will be billed at the actual cost incurred by Experitec. For assignments away from the employee's home base, a weekend trip home will be allowed a minimum of once every two weeks and the Client shall pay such travel expenses. A per diem rate can be negotiated for long term assignments.

### 3.0 Emergency Call-Out

The Client will be charged a minimum of four (4) hours at the prevailing and applicable rate (Straight Time, Overtime, or Holiday) for any Emergency Call-Out.

### 4.0 Taxes

Experitec's prices do not include any applicable sales, use, excise, or similar taxes, which

Experitec may now or hereafter is required to pay or collect. These taxes shall be billed to and paid by the Client as a separate item unless the Client has furnished Experitec with a tax exemption certificate acceptable to Experitec and the taxing authorities.

### 5.0 Warranties

#### Services

Services performed by Experitec will be conducted in a manner consistent with that level of care and skill ordinarily exercised by the industry practicing under similar conditions. The warranty on services provided by Experitec is for one year from the agreed upon acceptance date. Experitec will, at its option and cost, either correct any element of the services found to be non-conforming to the agreed upon acceptance criteria, or refund the cost of the portion of the service found to be non-conforming to the agreed upon acceptance criteria, provided the Client notifies Experitec immediately upon discovery of the non-conformity. The foregoing warranty includes a warranty that configuration deliverables established, created, or provided solely by Experitec are Year 2000 compliant. Correction of Year 2000 configuration defects shall be handled the same as any other configuration defect. Elements of the services that are modified by the Client or any other person prior to our corrective action are excluded from this warranty. For purposes of this warranty, "Year 2000 Compliant" means that under normal use and care, for the duration of the warranty period stated herein, configuration deliverables will:

- Recognize and accept dates falling on or after 1 January 2000;
- Recognize and accept the year 2000;
- Recognize and accept 29 February in the year 2000;
- Record, store, process, sequence, present and output calendar dates and data related to dates falling on or after 1 January 2000, in the same functionality as they do on or before 31 December 1999 and without errors or omissions; and
- Lose no functionality with respect to the introduction into them of dates or data related to dates falling on or after 1 January 2000.

**No other warranty, whether oral, written, expressed or implied, is made or intended by any quote, proposal, confirmation, contract, report, design document or by any employee.**

**The foregoing constitutes Experitec's sole and exclusive warranty concerning services performed by Experitec and further constitutes client's exclusive remedy for breach thereof.** Regardless of whether any remedy set forth in this warranty fails of its essential purpose or otherwise, Experitec will not be liable for loss or damage whether direct, indirect, incidental, special, consequential, or punitive, including but not limited to, loss of profits or income, loss of funds contained in, dispenses by, or associated with any configuration deliverables, or loss of use or other benefits, arising out of or in connection with any services provided by Experitec, regardless of the legal basis asserted, including contract, tort,

negligence, implied or express warranty, or strict liability.

### Products

Experitec shall pass through the manufacturer's warranties it receives with the purchase of hardware or software to the extent such warranties may be passed through or assigned. No other warranties shall apply whether oral, written, implied, expressed, statutory or arising by law or custom, including but not limited to any implied warranty of merchantability or fitness for a particular purpose with respect to any product made whether or not pursuant to the Client's specifications, or whether such products are used alone or in combination with other products or devices.

### Simulation Software

The Client's use of Simulation Software should be subject to and pursuant to the applicable Simulation Software License Agreement. If Client discovers physical defects in the media on which Simulation software is distributed or in the Simulation documentation, Experitec will replace the media or documentation at no charge to Client, provided Client returns the item to be replaced with proof of payment to Experitec during the ninety day period after Client purchased Simulation software and provided neither Client nor any third party made alterations, modifications or repairs to such items. See the appropriate Simulation Software License agreement for licensing details.

Experitec excludes any and all implied warranties, including warranties of merchantability and fitness for a particular purpose and limits your remedy to returning the software and documentation to Experitec for replacement. In no event will Experitec be liable whether in contract, tort or otherwise for direct, indirect, special, incidental, or consequential damages arising out of the use or inability to use the software or documentation, even if the Client advises Experitec of the possibility of such damages. In particular, Experitec shall have no liability for any programs or data sorted or used with Simulation software including costs of recovering such programs or data.

### Returns

Except as otherwise provided herein, the Client shall not return any product or software without Experitec's written authorization and then such return shall be subject to Experitec's standard 25% restocking charge and/or Experitec's supplier's charge, whichever is greater.

### 6.0 Limitation of Liability

Experitec, its contractors and suppliers, shall not be liable in contract, in tort (including negligence or strict liability) or otherwise, for damage or loss of property or equipment, loss of profits or revenue, loss of use of equipment, cost of capital, cost of purchased or replacement power or temporary equipment (including additional expenses incurred in using existing facilities), claims of Client or customers of the Client, or for any special indirect, incidental or consequential damages whatsoever. The remedies of the Client set forth herein are exclusive, and the total cumulative liability of Experitec with respect to any contract, or anything done in connection

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therewith such as the performance or breach thereof, or from any services covered by or furnished under the contract whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product, service or part of the services on which such liability is based.

### **7.0 Excuse of Performance**

Experitec shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Experitec's reasonable control.

### **8.0 Insurance**

Any additional insurance required by the Client in excess of that normally carried by Experitec will be invoiced at cost to Client.

### **9.0 Indemnification**

Client shall defend, indemnify and hold harmless Experitec and its directors, officers, shareholders, employees, contractors, subcontractors, agents or affiliates from and against any and all suits, actions, legal or administrative proceedings, claims, demands, actual damages, fines, punitive damages, losses, costs, liabilities, interest, and attorneys' fees (including any such fees and expenses incurred in enforcing this indemnity) that, irrespective of Experitec's negligence: (a) exceed the limitation of Experitec's liability provided for in Articles 5.0 and 6.0; (b) results from, arise out of, or are in any way connected with acts or omissions of Client, Client's employees, agents and subcontractors, and their employees or agents; (c) results from Experitec's use in its performance under the contract of information, representations, or data furnished by or approved by the Client, Client's employees, agents and subcontractors, and their employees or agents; or (d) results from the misuse of products, software or documentation by Client, Client's employees, agents, or subcontractors, and their employees or agents or Client's buyers.

### **10.0 Billing/Payment Schedule**

For Time and Materials projects, billing will be biweekly.

For Lump Sum projects, the following billing schedule will apply:

30% due upon acknowledgment and acceptance by Experitec of Client's purchase order and project schedule.

30% due upon completion of milestone agreed upon between Experitec and Client.

40% due upon the Client's reasonable acceptance of completed services.

Subject to approval of Experitec's Credit Department, payment is due twenty (20) days from invoice date, otherwise payment is due upon receipt. Payment of invoices are in no case subject to unilateral discounting or reductions by Client. If Client fails to pay undisputed invoiced amounts within (45) calendar days from invoice date and in accordance with these terms, Experitec may then at any time, without waiving any claims or incurring any liability, suspend work in progress, defer shipments, require satisfactory security or terminate the contract related to this

invoice. In addition, interest shall be due on all past due balances at the rate of 1% per month compounded monthly on the total past due balance. All claims, disputes, or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement shall be decided by binding arbitration in accordance with the then-most current rules of the American Arbitration Association. The prevailing party shall be entitled to its reasonable attorney fees and expenses and the parties shall equally bear the arbitration fees.

### **11.0 Security Interest**

The Client grants Experitec a security interest in the equipment furnished under and described in the contract and Experitec shall retain a security interest in such equipment until the full purchase price has been paid. Client agrees upon Experitec's request to execute such UCC financing statements reflecting Experitec's security interest. No equipment furnished by Experitec shall become a fixture by reason of being attached to real estate. The Client's failure to pay any amounts when due shall give Experitec the right to possession and removal of or to render unusable the equipment.

### **12.0 Shipping**

Unless otherwise provided in the contract, Experitec will select the method of transportation and routing for equipment. Terms are F.O.B. shipping point and shipment shall be made freight collect or prepaid and charged to Client at Experitec's cost as a separate item on the invoice. Title and risk of loss in the equipment shall pass to client upon Experitec's delivery of equipment to shipping point. Client must claim any transportation damage directly against the carrier.

### **13.0 Client Changes or Delay**

The Client may request Experitec to make changes in the specifications for equipment or work covered by the contract. In such event, the contract price and/or delivery dates shall be equitably adjusted. Experitec shall be entitled to payment for costs and expenses incurred for work, materials and hardware rendered unnecessary or unusable as a result of such changes, or required to affect said changes, at the Straight Time or Overtime rate applicable plus the cost for materials and hardware items at the prices set forth in the contract.

### **14.0 Cancellation**

Equipment or work, which remains to be furnished under the contract, may be canceled by the Client with thirty (30) days written notification to Experitec. In the event of such cancellation, Experitec shall be entitled to a "Cancellation Fee" as defined herein, for costs and expenses incurred for work completed or commenced, and/or work, materials and hardware items required in connection with the equipment or work so canceled. The Cancellation Fee shall be the amount of any progress payments paid or owed by Client plus any work, material or hardware costs incurred by Experitec beyond the amount of such progress payments in accordance with the prices set forth in the canceled contract.

### **15.0 Patent Infringement**

Experitec makes no representation and assumes

no liability as to any patents that may be involved in the services provided hereunder.

### **16.0 Applicable Law**

These terms and conditions shall be interpreted according to and governed by Missouri Law. The Client hereby consents to the exclusive jurisdiction and venue of the courts in the state of Missouri and any federal court located in such state in the event of any arbitration award hereunder and with respect to any other dispute arising hereunder.

### **17.0 Waiver**

No waiver of any term or condition or the breach of any term or condition herein shall be effective unless in writing and signed by Experitec. No waiver shall constitute a waiver of any subsequent breach of such term or condition and does not justify or authorize non-observance on any other occasion of such term or condition or any other terms, conditions or obligations.

### **18.0 Ownership**

Ownership of any and all developments intended to improve Experitec's or the Client's engineering efficiency shall be the sole property of Experitec subject only to Client's right to use the products pursuant to the applicable contract. Any knowledge obtained through the performance of services shall be deemed the intellectual property of Experitec and may be used by Experitec to perform future work to the extent that it does not conflict with the use of confidential information. The Client shall execute any documents and take any action necessary to give effect to this Article.

### **19.0 Confidential Information**

Client will use reasonable care to restrict Experitec information (including, but not limited to, quotations, pricing, standards of performance, engineering methods and other technical documentation) only to those employees and contractors who (a) need the information in order to perform their duties and (b) are themselves personally obligated to not make any unauthorized disclosure and/or use of them. Experitec will treat Client's confidential information as such, and will use similar reasonable care to restrict the disclosure to others such information.

### **20.0 Client Supplied Data**

To the extent that Experitec has relied upon any specifications, information, representation of operating conditions or other data supplied by the Client in the selection or design of the solution or in Experitec's preparation of the quotation and in the event that such information is incorrect or differs from that which was represented by the Client, then any warranties or other provisions contained herein which are affected by such information shall be null and void and any labor expended to perform or correct such items shall be billed to Client at the prevailing rates.

### **21.0 Subcontracts**

Experitec reserves the right to subcontract any or all of the work to be performed to a qualified entity.

### **22.0 Assignments**

Client shall not assign the related quote, response or contract or any rights hereunder, nor delegate the performance of its obligations hereunder without the prior written consent of Experitec.