



# **Terms And Conditions**

## SCHEDULE

### PART 1 AGREED EXPRESSIONS

- 1.1 In these terms and conditions the following words shall have the following meanings:

<b>Expression</b>	<b>Meaning</b>
<b>"we "us", "our" or "EXPERIOR"</b>	EXPERIOR Technical Services Limited
<b>"you", "your" or "Customer"</b>	means the corporate entity, firm or person who accepts a Proposal from EXPERIOR for the performance of the Services.
<b>"Conditions"</b>	means the terms and conditions set out in this document
<b>"Order"</b>	means the Customer's purchase order or the EXPERIOR Customer work authorisation form
<b>"Product Sample"</b>	means the physical sample of a product and any documentation provided by or for the Customer and upon which the Services are to be performed.
<b>"Proposal"</b>	means the written proposal or quotation produced by EXPERIOR for the Customer
<b>"Special Conditions"</b>	means any additional conditions applying to the provision of the Services and agreed to in writing between EXPERIOR and the Customer.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 The schedules to this agreement form part of (and are incorporated into) this agreement.

## **PART II CORE TERMS**

### **1. General**

- 1.1. These Conditions are the sole conditions under which we offer the Services to you and these Conditions and any Special Conditions we may agree between us shall apply to the exclusion of any other terms and conditions which you may wish to apply including any terms which are included in the Order.
- 1.2. In the event of a conflict between these Conditions and any Special Conditions we may agree with you, the Special Conditions shall apply to the extent that they are inconsistent with these Conditions.
- 1.3. We will agree any variation of these Conditions and any Special Conditions with you in writing either prior to or following acceptance of your Order.
- 1.4. EXPERIOR's employees or agents are not authorised to make any representations and will not be deemed to be providing advice whether in the course of providing the Services or in the context of unscheduled telephone calls or any other communications unless confirmed by EXPERIOR in writing. You acknowledge that you accept this and do not rely on any representations or advice which is not confirmed in writing by EXPERIOR.
- 1.5. We will make every effort to ensure that any prices provided are correct. However we may whenever appropriate be entitled to correct any typographical, clerical or other error or omission in any sales literature, Proposal, price list, acceptance of offer, invoice or other document or information issued by EXPERIOR without any liability on the part of EXPERIOR.

### **2. Proposals and Orders**

- 2.1. The Proposal is open for a period of 30 days only from the date stated on the Proposal, provided that we have not previously withdrawn it. Where applicable we will add VAT to the price stated in the Proposal.
- 2.2. Unless stated otherwise, the price stated in the Proposal assumes that any testing will be performed in one operating mode and that a set-up time of 15 minutes will be sufficient on each test site. An additional charge at our then current rates may be incurred if further time is required. In the case of separate additional testing there will be a minimum charge of 1 hour at our then current rates, irrespective of the testing time.

- 2.3. If you cancel an Order for Services less than 24 hours before the start time booked, we reserve the right to charge 100% of the full fee for the first five days of work; this payment may be reduced or waived at the sole discretion of the relevant EXPERIOR Business Manager.
- 2.4. If you cancel an Order for Services less than five working days but more than 24 hours before the start time booked, we reserve the right to charge 50% of the full fee for the first five days of work. This payment may be reduced or waived at the discretion of the relevant EXPERIOR Business Manager.
- 2.5. The Proposal will have been based upon information you gave us at the time of the enquiry and may be subject to change if the Product Sample supplied differs from the original enquiry. We reserve the right to charge for additional parameters not identified at the time of enquiry.
- 2.6. We can allocate time to you on a provisional basis when you accept the Proposal. However, the time will not be confirmed or guaranteed until we have received an official Order from you.

### **3. Payment**

- 3.1. If we have agreed a credit limit with you, we may, at our discretion, perform chargeable work in advance of payment up to the value of the agreed credit limit. In these circumstances, we will invoice you at the end of a job or at our discretion at the end of each month for work undertaken during that month whichever is the earlier. For jobs where the value exceeds the size of your credit limit, we will agree invoicing and payment intervals with you.
- 3.2. If we have not agreed a credit limit with you, we will invoice you for the price of the Services when you have placed the Order. We will expect you to pay the invoice in full before we begin work.
- 3.3. Our standard payment terms are 30 days from the date of our invoice. Any changes to this must be agreed with us in advance.
- 3.4. We are entitled to charge interest at the base rate of the Bank of England plus 4% on any overdue balances.
- 3.5. You are not entitled to withhold any payment or to make any deduction from the invoiced amount in respect of any set-off or counterclaim.

- 3.6. If you ask EXPERIOR to perform any work additional to the Services and we comply with this request, you will pay us for this work at our current rate of charge.
- 3.7. In the event of suspension of the Services by reason of test failure, or any act of omission by you, we may increase any prices quoted to cover any extra expenses incurred by reason of such suspension.

#### **4. Product Samples**

- 4.1. You will deliver the Product Sample to our premises, carriage paid, (and if from abroad duty paid) by the time agreed or otherwise in time for the Services to be carried out.
- 4.2. You agree to ensure that the Product Sample is fully described, performs in a safe manner and, where testing is required, is fit for testing. If the Product Sample is not fit for testing, we may at our discretion either refuse to test the Product Sample until you have made it fit for testing or may make the Product Sample fit for testing, in which case you agree to pay EXPERIOR for this work at our current rate of charge.
- 4.3. If the Product Sample is battery powered, you will provide either a dummy battery or alternatively spare batteries and a separate charging unit to ensure that battery changes can be made as required.
- 4.4. It is your responsibility to supply all equipment required to support and monitor the operation of the equipment and associated system including any cables, terminators, and power supplies. If configuration software is supplied, you will provide a suitable laptop on which to run it. By prior arrangement, we may be able to organise the supply of some equipment, however in either case we will not be liable for any failures associated with support equipment whether supplied by you or us.
- 4.5. We will take all reasonable steps to safeguard the Product Sample whilst on our premises, but you acknowledge and accept that the nature of the Services may damage the Product Sample and consequently you will not hold EXPERIOR responsible for any such damage.
- 4.6. If you do not arrange for the collection of the Product Sample after testing we will return the Product Sample to you at your risk and subject to the cost of carriage being pre-paid by you. If despite being requested to do so you do not pay

carriage in advance for the return of the Product Sample, we may, on giving you 14 days notice, arrange for disposal of the Product Sample at charge you for any disposal expense incurred by us.

## **5. Performance of the Work**

- 5.1. We will exercise reasonable skill and care in carrying out the Services which we have contracted to provide.
- 5.2. We will perform the Services and send the results to you in the form agreed as soon as we are reasonably able to do so. Time shall not be of the essence in our performance of the Services unless we specifically agree otherwise in writing.
- 5.3. If a Product Sample fails to comply with its desired specification during unaccompanied work, we will invoice for the work performed up to the point of failure and any additional administrative work that maybe incurred at our then current hourly rates. If you request that testing is completed, the full test cost will apply. Any re-testing of a failed unit will normally be at additional cost at the higher of our then current rates or the rates agreed for the Services.
- 5.4. If a Product Sample fails to comply with its specification during accompanied work, we reserve the right to charge at our then current rates for all booked time up to a maximum of 5 days; this payment may be reduced or waived at the discretion of the relevant EXPERIOR Business Manager.

## **6. Confidentiality**

- 6.1. We undertake to keep confidential all technical information relating to the Product Sample which comes to our knowledge as a result of your Order, except for such information which is already in the public domain or such information which we are required to produce by law.
- 6.2. The confidentiality obligations referred to in clause 6.1 above shall not apply to any information passing between EXPERIOR and any of its subsidiaries or group companies of EXPERIOR provided always that any subsidiary or group company who receives this information will be bound by the confidentiality obligations set out in clause 6.1 hereto.

## **7. Limitation of Liability**

- 7.1. EXPERIOR does not exclude liability for death or personal injury.
- 7.2. EXPERIOR will not be liable for any damage to Product Sample submitted for testing where that damage occurs in the ordinary course of testing.
- 7.3. EXPERIOR shall not be liable in any circumstances to the Customer whether in contract, tort or otherwise for any special, consequential or indirect loss, damage or injury, costs or expenses howsoever arising and of whatsoever nature. EXPERIOR's total liability (whether in contract, tort or otherwise) under or in connection with any or all instructions received from you shall not in any circumstances exceed £100,000, or if lower, the value of the Order.
- 7.4. EXPERIOR does not warrant or represent whether by virtue of the provision of the services or otherwise that as a result of the provision of the Services any Product Sample or any product based upon or produced from it will perform adequately or at all or will be fit for any particular or specific purpose if applied or used in any way by any party whether the Customer or otherwise in any given context or for any practical application.

## **8. Cancellation and Insolvency**

- 8.1. Upon the occurrence of any one of the events set out in 8.2 below:
  - (i) we will have the right at any time to cancel the Order and to cease work immediately; and
  - (ii) payment for work already done by us shall be due and payable immediately.

These rights shall be without prejudice to any other remedies EXPERIOR may have in relation to cancellation in the circumstances set out in 8.2 below.
- 8.2. The events referred to in 8.1 above are:
  - (I ) any default or breach by you of any of your obligations under these terms or any delay in payments due to EXPERIOR;
  - (ii) If any distress, execution or other legal process shall be brought or served against or in relation to your property or assets;
  - (iii) If you shall make or offer to make any arrangement of composition with your creditors or commit any act of bankruptcy;

(iv) If any petition or receiving order shall be presented or made against you;

(v) If the Customer is a company, any resolution or petition to wind it up shall be passed or present, or if a Receiver of all or any of its assets shall be appointed.

8.3. Cancellation of an Order by the Customer shall not be valid or effective without the written acknowledgement and consent of EXPERIOR.

## **9. Rights on Termination**

9.1. In the event of any Order being cancelled by us under Clause 8 of these Conditions prior to completion of all the Services by us, we shall be entitled without prejudice to any other claims against you to recover from you the full pro rata cost of the Services undertaken by us to that date at our agreed rates.

9.2. For the duration of the Services and for a period of one year afterwards the Customer, its officers, employees or agents or otherwise agrees that whether as a consultant, principal, partner, director, employee or otherwise it shall not approach, solicit, entice away or employ any employees, agents or consultants of EXPERIOR who were involved in providing the Services.

## **PART III GENERAL CONDITIONS**

### **10. Force Majeure**

10.1. We shall not be liable for any failure to perform the Services arising from circumstances outside our control.

10.2. Non-exhaustive illustrations of such circumstance would be an act of God, war, riots, explosion, fire, flood, strikes, lockouts, Government action or regulations (UK, EEC or otherwise) accidents and shortage of labour or facilities.

10.3. Should we be prevented from performing the Services in the above circumstances we will notify you of the fact in writing as soon as reasonably practicable after discovering it.

10.4. If the circumstances preventing performance still exist three months after you receive our notice then either party may give written notice to the other canceling the Order.



10.5. If an Order is cancelled in this way, we will refund any payment which you have already made on account of the price but we will not be liable to compensate you for any further loss or damage caused by any non-performance of the Services.

## **11. Notices**

11.1. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being or by sending it by fax to the fax number notified by the relevant party to the other party. Any such notice shall be deemed to have been received:

- (i) if delivered personally, at the time of delivery;
- (ii) in the case of pre-paid recorded delivery or registered post, [48] hours from the date of posting;
- (iii) in the case of fax, at the time of transmission.

11.2. In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party).

## **12. Entire agreement**

12.1. Each party on behalf of itself acknowledges and agrees with the other party that:

- (i) this agreement together with any documents referred to in it constitute the entire agreement and understanding between the Consultant Company and the Company and supersedes any previous agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
- (ii) in entering into this agreement neither party has relied on any Pre-Contractual Statement; and

(iii) the only remedy available to it for breach of this agreement shall be for breach of contract under the terms of this agreement and each party shall have no right of action against any other party in respect of any Pre-Contractual Statement.

12.2. Nothing in this agreement shall, however, operate to limit or exclude any liability for fraud.

### **13. Variation**

No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

### **14. Severance**

If at any time one or more of the provisions of this Agreement is held to be void in whole or in part or otherwise unenforceable for any reason under any relevant or applicable law then any such provision shall be deemed to be omitted from this Agreement and the validity or enforceability of the remainder of these provisions shall not be affected or impaired in any way.

### **15. Counterparts**

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

### **16. Third party rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the Company shall have any rights under it. The terms of this agreement or any of them may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this agreement may be rescinded (in each case), without the consent of any third party.

## **17. Dispute Resolution**

- 17.1. If at any time any dispute or difference or question shall arise between the parties concerning the construction meaning or effect of this Agreement or anything contained in it or the rights or liabilities of the parties under this Agreement then the parties undertake that, prior to the commencement of an alternative dispute resolution procedure under Clause 17.2 they will seek to have the dispute resolved amicably between themselves.
- 17.2. If the dispute has not been resolved to the satisfaction of any party within 21 days of initiation of the process under clause 17.1 any such party will be entitled by written notice to the other to require the other party to have the dispute resolved by mediation at their joint expense.
- 17.3. If either Party fails or refuses to participate in or withdraws from participating in the mediation process or if the dispute has not been resolved to the satisfaction of either Party within 30 days of initiating the mediation process, then any dispute or difference or question unresolved by such mediation shall be referred by either party to an arbitrator to be nominated in the absence of agreement by the President for the time being of the Institute of Arbitrators and according to the provisions of the Arbitration Act 1950 as amended and extended and the decision of the arbitrator will be final and binding on all the Members and any Outgoing Member and the costs of the arbitration shall be payable by the party against whom the arbitrator's decision is made on a full indemnity basis.
- 17.4. Nothing in this Condition 17 shall restrict or prevent either Party from seeking injunctive relief at any time.

## **18. Independent Advice**

Each of the parties acknowledge that they have prior to signing and becoming a party to this Agreement and that by virtue of doing so they will be deemed to have obtained and are or will be similarly deemed to be relying exclusively upon their own separate and independent legal, tax, accounting and financial services advice as to the terms and effect of this Agreement and as to its tax implications and efficacy (or otherwise) to or for them.

## **19. Law and Jurisdiction**

- 19.1. This Agreement shall be governed by interpreted and construed in all respects in accordance with the Laws of England.
- 19.2. Subject to the provisions of General Condition 18 above regarding resolving disputes the parties to this Agreement otherwise irrevocably submit to the exclusive jurisdiction of the English Court.

**End**