



ENSURING STRUCTURAL INTEGRITY



32628 DECKER PRAIRIE  
ROAD, SUITE 1  
MAGNOLIA, TX 77355



281-259-7000



[www.exoinc.com](http://www.exoinc.com)

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## General Terms and Conditions for Professional Services

The following terms and conditions of sale (“Terms”) shall be the exclusive terms incorporated into all proposals by Exo Group, LLC (“EXO” which shall include EXO’s subsidiaries and affiliates) for the sale of goods and/or services (“Work”) by EXO, and shall further serve as the exclusive terms incorporated into any purchase order or agreement between EXO and Client (The term “Client” shall refer to the corporation, firm, person(s) or other legal entity soliciting Work from EXO and shall include Client’s subsidiaries and affiliates). These terms may not be modified or supplemented except by the written agreement of EXO and Customer.

### 1. Independent Contractor

EXO is an independent contractor and all persons employed to provide products, services or opinions during the term of this project are employees of EXO and its subcontractors, not of Client. Client and EXO agree to be solely responsible for compliance with all local, state and federal rules, regulations and laws applicable to their respective employees.

### 2. Scope of Services

EXO agrees to provide “Work” (to include testing, engineering, consulting and/or field remediation services, as appropriate) to Client. If Client is ordering Work in a representative capacity on behalf of a third-party, Client warrants that it is a duly authorized agent of said party for the purpose of ordering and managing the Work. Client’s acceptance of any proposal or the ordering of any Work from EXO shall constitute Client’s full acceptance of these Terms.

### 3. Payment Terms

If any terms or conditions regarding payment are included in an associated proposal, such terms shall govern to the extent they expressly conflict with this provision. EXO will submit its invoice to Client immediately upon completion of services. There will be no retainage or holdback from invoices submitted unless specifically agreed to in the writing. Payment in full is due within 30 days from the invoice date, regardless of whether or not Client has received payment or reimbursement from other parties. Client agrees to pay an interest rate of 1.5% per month (18% per annum) on any past



due accounts. Client additionally agrees that it shall be responsible for any expenses incurred by EXO that result from Client's failure to timely remit full payment. Such expenses may include reasonable and necessary attorney's fees, expert witness fees, costs of court, and pre- and post-judgment interest.

#### **4. Changes**

Client may by written order make changes, revisions, additions, or deletions in the Work. Within ten (10) days after the receipt of a written order EXO shall give Client a written estimate of any required adjustments in price and performance time. Adjustments in price shall be based upon agreed rates as presented in the associated proposal. EXO shall have no obligation to commence Work in connection with any change until the adjustments in price and performance time is agreed upon in a writing signed by both parties.

#### **5. Force Majeure**

In the event EXO is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, or other causes reasonably beyond its control, EXO shall not be liable for any damages resulting from such failure to perform or otherwise from such causes. EXO's compensation and performance time shall be equitably adjusted to the extent a Force Majeure event results in a change to the scope of Work.

#### **6. Notice and Opportunity to Cure**

Whenever a breach of this Agreement by either party is relied upon as a justification for any action taken by the other party, before such action is taken, the party asserting the breach shall give the other party written notice of the existence and nature of the breach and such other party shall have the opportunity to correct such breach during the 30-day period following such notice. If such cure is effected, then any such breach shall not be a basis for the party intending to rely thereon.

#### **7. Indemnification**

**TO THE FULLEST EXTENT PERMISSIBLE BY THE LAW OF THE RELEVANT JURISDICTION, EACH PARTY TO AN AGREEMENT ENTERED INTO PURSUANT TO THESE TERMS AGREES TO DEFEND, HOLD HARMLESS, AND INDEMNIFY THE OTHER PARTY AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES AGAINST ANY DIRECT LOSS, LIABILITY, DAMAGE, OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES (IN AN AMOUNT**



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**PROPORTIONATE TO THE DEGREE OF FAULT OF THE INDEMNIFYING PARTY), FOR INJURY OR DEATH TO PERSONS, INCLUDING EMPLOYEES OF EITHER PARTY, AND DAMAGE TO PROPERTY, INCLUDING PROPERTY OF EITHER PARTY, BUT ONLY TO THE EXTENT ARISING OUT OF OR IN CONNECTION WITH INTENTIONAL, WILLFUL, WANTON, RECKLESS OR NEGLIGENT CONDUCT, ERRORS OR OMISSIONS OF THE INDEMNIFYING PARTY OR THE INDEMNIFYING PARTY'S EMPLOYEES, OFFICERS, AGENTS, INDEPENDENT CONTRACTORS OR SUBCONTRACTORS OF ANY TIER. HOWEVER, NEITHER PARTY SHALL BE INDEMNIFIED HEREUNDER FOR ANY CONSEQUENTIAL LOSS, OR FOR ANY LOSS, LIABILITY, DAMAGE, OR EXPENSE RESULTING FROM ITS SOLE NEGLIGENCE OR WILLFUL MISCONDUCT. WHERE PERSONAL INJURY, DEATH, OR LOSS OF OR DAMAGE TO PROPERTY IS THE RESULT OF JOINT NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EXO AND CLIENT, THE INDEMNITOR'S DUTY OF INDEMNIFICATION WILL BE IN PROPORTION TO ITS ALLOCABLE SHARE OF SUCH JOINT NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT. THE INDEMNIFYING PARTY SHALL BE RESPONSIBLE FOR TAKING OR CAUSING TO BE TAKEN ALL REASONABLE STEPS TO MITIGATE ITS LOSSES UPON AND AFTER BECOMING AWARE OF ANY EVENT THAT COULD REASONABLY BE EXPECTED TO GIVE RISE TO A LOSS THAT MAY BE INDEMNIFIABLE UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF ANY RELEVANT AGREEMENT, FOR EVENTS THAT OCCURRED DURING ITS TERM. THIS INDEMNIFICATION SHALL BE SEPARATE AND APART FROM, AND IN ADDITION TO, ANY OTHER INDEMNIFICATION PROVISIONS SET FORTH ELSEWHERE IN THESE TERMS.**

## **8. Warranty**

EXO represents and warrants that (1) the Work will be performed in accordance with the Contract; (2) EXO shall use sound and professional principles and practices in accordance with consistently accepted industry standards in the performance of the Work hereunder; (3) performance of the Work by EXO Personnel shall reflect sound professional knowledge, skill and judgment; and (4) EXO shall, and shall cause EXO Personnel to, perform the Work in accordance with Law, including required licenses and permits. The warranty, or the remaining portion of such warranty, provided pursuant to this Agreement shall be transferable to any subsequent third-party purchaser of the Work.

Disclaimer. Statements made in all reports and correspondence provided by EXO are opinions based upon EXO's experience in the field of work undertaken and testing and other items (metallurgical analysis, etc.) that have been gathered during the



course of the project. These are not to be construed as representations of fact. EXO does not warrant that: the Work or Deliverables will meet Client's requirements; operation of the Work or Deliverables will be uninterrupted or error-free; or any errors which may be contained in the Work or Deliverables can or will be fixed. To the fullest extent permitted by law, EXO hereby disclaims all other warranties, whether express or implied, oral or written, with respect to the documentation, deliverables, and services including, without limitation, all implied warranties of accuracy, integration, merchantability or fitness for any particular purpose and all warranties arising from any course of dealing, course of performance or usage of trade.

**Client Acknowledgment. Client hereby acknowledges that any inspection performed by EXO on any asset is based on the visible and apparent condition of the asset's structure and its components on the date of the inspection and is not determinative of future conditions. An inspection will not necessarily reveal every problem that exists or ever could exist, but only those material defects observed on the day of the inspection. It is EXO's routine observation that asset condition may and often does change over time. As such, EXO's warranty excludes any remedy for defects that develop and/or become visible and apparent after the date of the inspection, or for defects associated with design issues, wind induced vibration, latent defects, misuse, neglect, or improper maintenance of the asset. ALL WARRANTY CLAIMS MUST BE SUBMITTED IN WRITING WITHIN TWELVE (12) MONTHS OF CLIENT'S ACCEPTANCE OF THE WORK. CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY, EXPRESS OR IMPLIED, SHALL BE LIMITED TO THE REPERFORMANCE OF ANY DEFECTIVE SERVICE PERFORMED BY EXO AND IN SHALL IN NO EVENT INCLUDE ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS.**

## **9. Safety**

Work will only be performed in accordance with conditions determined to be safe by EXO personnel. Additional charges may be due and payable for safety and security measures needed due to hazardous working environments that EXO may encounter. Client affirms that EXO is only responsible for the safety of its own employees and subcontractors and is not responsible for the safety of any other persons, property or items. The Client shall provide EXO with any information known and readily available to it regarding subsurface conditions and existing above-ground structures and facilities at sites relevant to the performance of the Work. Client agrees that EXO may delay Work until such time Client has achieved a satisfactory and safe working environment.



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## 10. Deemed Acceptance

Client shall promptly indicate acceptance or non-acceptance of each Deliverable. Unless otherwise specified in a statement of work, a Deliverable shall be deemed accepted by the Client upon the first occurrence of:

- i. Client's written indication of acceptance of such Deliverable;
- ii. Client's beneficial use of such Deliverable, including without limitation, the use of such Deliverable in a production environment; or
- iii. The date fifteen (15) calendar days after EXO'S delivery of such Deliverable to Client unless Client has indicated non-acceptance prior to such date.

## 11. Limitations of Liability

Unless expressly provided for herein, neither party, nor their respective officers, directors, trustees, agents, employees, successors, assigns, or subcontractors shall be liable to the other party or its officers, directors, trustees, agents, employees, successors, assigns, or subcontractors for claims, suits, actions, causes of action or otherwise for incidental, punitive, special, indirect, or consequential damages (including, but not limited to: loss of use, loss of revenue, loss of profit, and/or cost of replacement power, interest charges, cost of capital, and also including costs of reasonable fees, disbursements and expenses for attorneys and experts) connected with, or resulting from, performance or non-performance of this Agreement or any action undertaken in connection with, or related to this Agreement, including, without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, or strict liability. THIS LIMITATION OF LIABILITY REGARDLESS OF WHETHER EXO KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE POSSIBILITY OF LOSS.

**Notwithstanding anything to the contrary in this Agreement, a party's maximum liability hereunder or with respect to this Agreement, regardless of cause (whether in contract, tort, strict liability or otherwise), shall not exceed in the aggregate, the total cumulative amounts set forth in all purchase orders issued pursuant to this Agreement, provided, however, that nothing contained in this section or in any other provision shall be construed to limit a party's liabilities: (I) with respect to any gross negligence or willful misconduct or fraud; (II) breach of a party's obligations of confidentiality and nondisclosure; or (III) regarding a party's indemnity obligations.**

## **12. Insurance**

EXO maintains commercial general liability, workers compensation, automobile and professional liability insurance under policies written by national insurance agencies - evidence of such coverage will be provided to appropriate parties upon request.

## **13. Termination**

Agreements may be terminated by either party upon thirty (30) days prior written notice. In the event of such termination, Client agrees to compensate EXO for all services performed and costs incurred (or which EXO has been obligated to incur) for all activities up to and including the date of termination and for any/all post termination activities including but not limited to demobilization and final reporting.

## **14. Intellectual Property and Ownership of Work Product**

Client acknowledges that EXO shall own all intellectual property rights and other proprietary rights in and to the services, deliverables, and documentation and any other materials and information EXO provides to Client as part of this Agreement whether developed in performance of this Agreement or a statement of work hereunder or pre-existing. These intellectual property rights and proprietary rights may include, but are not limited to, all current and future worldwide patents and other patent rights, copyrights, trade secrets, trademarks, inventions, procedures, documentation, reports and drawings, and the related documentation or tangible expression thereof. The reports, specifications and other documents prepared by EXO under this Agreement (“Deliverables”) are instruments of service for use solely with respect to the purpose for which they are prepared. EXO is the author of the Deliverables and retains all common law, statutory and other reserved rights, including all copyrights thereto. The Client may retain copies, including reproducible copies, of the Deliverables for information and reference. The Deliverables will not be used by the Client or others for purposes unrelated to this Agreement without EXO’s prior written consent. In the event of any unauthorized reuse of the Deliverables by or through the Client, the Client will indemnify, defend, and hold EXO harmless from any and all claims, causes, damages, losses, liability and expenses, including but not limited to attorneys’ fees arising out of said use. Client will give prompt written notice to EXO if Client becomes aware of any deficiency in the Deliverables.

All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, software, works of authorship and know-how, or the like, whether or not patentable or copyrightable, (collectively “Intellectual Property”), which EXO has in





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place prior to the Work, conceives, develops, has developed, or begins to develop, either alone or in conjunction with others, prior to execution of any Agreement, regardless if utilized to perform the Work, and for perpetuity, shall be the sole and exclusive property of EXO (“EXO Intellectual Property”). However, in the event that any Work or Deliverable incorporates EXO Intellectual Property, or Client’s use of any Work or Deliverable would constitute a violation of any Intellectual Property rights or proprietary rights of EXO, provided all requisite costs, fees and expenses have been paid by Client, EXO shall grant Client an irrevocable, perpetual, non-exclusive, non-sublicensable, worldwide, transferable, royalty-free, limited to permit Client to exercise all intellectual property rights and proprietary rights, but only as embodied in the Work or Deliverable and not separate and apart from the Work or Deliverable. This license does not permit Client to sell, resell, reproduce, publicly display, perform, distribute, create derivative works, decompile, reverse engineer, modify or attempt to modify any EXO Intellectual Property. Any rights or interests not expressly granted to Client under this Agreement are reserved by EXO.

## **15. Confidentiality**

Under this Agreement, the employees of each party may be exposed to confidential, proprietary, and competitively sensitive information and materials of the other party (hereinafter referred to as the “Confidential Information”). Both parties agree for themselves and all of their employees (and subcontractors, if applicable) that such information shall be kept confidential and not disclosed to third-parties. The Confidential Information will be disclosed only to employees, consultants, and agents of who have a need to know the Confidential Information. Each party shall be fully liable for any breach of this Agreement by its employees, consultants, and agents and agrees, at its sole expense, to take all reasonable and appropriate measures to restrain its employees, consultants, and agents from prohibited or unauthorized disclosure or use of the Confidential Information. In no event shall either party use or exploit any Confidential Information of the other party for its own benefit or the benefit of a third-party. This obligation of the parties to keep Confidential Information of the other party confidential shall remain in effect for so long as any of the Confidential Information remains confidential or proprietary to Discloser.

At the termination or expiration of this Agreement, each party shall either return the other's Confidential Information in its possession, custody, or control (including all copies) or shall, at the disclosing party's direction, destroy the other party's Confidential Information (including all copies) and certify its destruction to the disclosing party. Either party may disclose the other party's Confidential Information upon lawful order of any competent court or government agency; provided, however, that prior to disclosure the receiving party shall inform the other party of such order



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within a reasonable time to allow the other party to object to or appeal such order if it so desires. Items will not be considered to be Confidential Information if (a) it can be shown to be previously known to the receiving party; (b) is or becomes publicly known through no breach of this Agreement by the receiving party; (c) is acquired by the receiving party from a third-party having no legal or fiduciary duty to the disclosing party to refrain from disclosing such information; (d) is developed independently by the receiving party without reference to any Confidential Information; or (e) is provided by the disclosing party to a third-party without similar restrictions on disclosure.

## **16. Non-Solicitation**

During the term of Work and for a period of two (2) years after Work is completed, Customer agrees to not, directly or indirectly solicit, or employ any person who was employed by EXO its affiliates at any time during the Work

## **17. Full Agreement**

These Terms, together with any written proposal submitted to the Client and any associated Purchase Order or Work Order, together with any relevant Change Orders, shall constitute the full agreement between the parties concerning the project and shall supersede any /all prior negotiations or verbal statements between them. Changes to EXO's proposal or these Terms must be made in writing by an officer of the company duly authorized to do so.

## **18. Arbitration**

In the event of any dispute or claim between EXO and the Client, the parties agree that such actions shall be resolved by binding arbitration in strict compliance with the rules and policies of the American Arbitration Association ("AAA"). The claimant shall be responsible for any/all fees associated with such action and both parties agree that prevailing party shall be awarded reasonable attorney's fees and other costs as determined by the arbitrator. The parties further agree that the jurisdiction for and site for all hearings shall be in Conroe, Montgomery County, Texas.

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