

## Vendor Terms and Conditions

**SELLER'S ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY LIMITED TO AND CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED HEREIN.** By executing a Purchase Order, Buyer and Seller agree and assent to all such terms and conditions. Any proposals submitted by Seller which vary such terms and conditions or which propose additional terms shall not become a part of the Agreement.

**Definitions:** “**Buyer**” means ECI SpinnOmatic or Experienced Concepts Inc. “**Seller**” means the Vendor and/or Customer business entity described in the Order.

**Basis of Purchase:** (a) The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these **Terms**. (b) These **Terms** shall apply to the Contract and to any Order to the exclusion of any other **terms** on which any quotation has been given to the Buyer or subject to which an Order is accepted or purported to be accepted by the Seller. (c) The Order will lapse unless unconditionally accepted by the Seller in Writing within 3 days of its date. Acceptance of the Order may be made by signing and returning the attached acknowledgement copy hereof, by other express acceptance, or by shipment of Goods or delivery of Services hereunder. If Seller uses its own order acknowledgement or other form to accept the Order, it is understood that said form shall be used for convenience only and any **terms** or conditions contained therein inconsistent with or in addition to those contained herein shall be of no force or effect whatsoever between the parties hereto. (d) No variation to the Order or these **Terms** shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller.

**Product Specifications:** (a) The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer. (b) The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services. (c) The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to shipment, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing. (d) If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance. (e) The Goods shall be marked in accordance with the Buyer’s instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

**Prices:** (a) The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be: (i) Exclusive of any applicable franchise taxes, sales or use taxes (which shall be payable by the Buyer); and (ii) Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax. The Supplier shall be responsible for all other taxes, assessments, permits and fees, however designated, that are levied upon the Contract, the Order or the Goods and Services, except for taxes based upon the income of the Buyer. No taxes of any type shall be added to invoices without the prior approval of the Buyer in Writing. (b) No increase in the Price may be made (whether on account of increased material, labor or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing. (c) The Seller will give the Buyer the benefit of any Price reduction occurring before the specified delivery date or the actual delivery date, which is later. The Seller warrants that the Price for the Goods is not less favorable than the price currently extended to any other customer of the Seller for the same or similar articles in similar quantities. (d) The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale or provided for in the Contract.

**Terms of Payment:** (a) The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order. All invoices, government and commercial bills of lading, and air express receipts shall be sent via email to the Buyer at [ivoices@expconcepts.com](mailto:ivoices@expconcepts.com) or Mail Experienced Concepts Inc. 15400 Chets Way Armada, MI 48005 (b) Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 45 days after the end

of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer. (c) The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

**Delivery and Acceptance:** (a) The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours. (b) Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date. (c) The time of delivery of the Goods and of performance of the Services is of the essence of the Contract. (d) Packing slips must accompany each case, parcel or container, showing the Buyer's order number, item number, and a complete description of its contents. (e) If the Goods are to be delivered, or the Services are to be performed, by installments, the Contract will be treated as a single contract and not severable. (f) The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. (g) The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services. (h) The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer. (i) If the Goods are not delivered or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay 5% of the Price for every day of delay, up to a maximum of 25%. In addition, the Buyer reserves the right to return any or all Goods in unopened original packing to the Seller if delivered to the Buyer more than 5 days after the due date.

**Risk of Loss and Passage of Title:** (a) Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract. (b) Title in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

**Warranties, Indemnification & Liability:** (a) The Seller warrants to the Buyer that the Goods and their packaging and labeling shall be in merchantable condition and shall be free from defects in design, material and workmanship and shall be in conformity with any relevant Specification or sample. (b) The Seller warrants that the Goods shall be fit for such particular purposes and uses, if any, as specified by the Buyer or otherwise known to the Seller or held out by Seller and shall comply with all statutory requirements and regulations relating to the sale of the Goods. (c) The Seller warrants that the Goods shall be free and clear of any lien or other adverse claim against title. (d) The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances. (e) All warranties contained herein shall survive inspection, test and acceptance by the Buyer. (f) Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled: (i) To require the Seller, without expense to the Buyer, to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or (ii) At the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid. (g) The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with: (i) Breach of any warranty given by the Seller in relation to the Goods or the Services; (ii) Any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer; (iii) Any claims made against the Buyer based upon, relating to, or arising out of any claimed defects in the Goods or Services ordered hereunder; (iv) Any alleged violation by the Goods or in the manufacture or sale of the Goods of any statute, ordinance, or administrative order, rule or regulation; (v) Any act or omission of the Seller or its employees, agents or subcontractors in supplying, delivering and installing the Goods; and (vi) Any act or omission of any of the Seller's personnel in connection with the performance of the Services. (h) The Seller's warranties (and any consumer warranties, service policies or similar undertakings of the Seller) shall be enforceable by the Buyer's customers and any subsequent owner or operator of the Goods as well as by the Buyer. (i) Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without limiting the foregoing, the

following shall be regarded as causes beyond either party's reasonable control: (i) Act of God, explosion, flood, tempest, fire or accident; (ii) War or threat of war, sabotage, insurrection, civil disturbance or requisition; (iii) Acts, restrictions, regulations, bylaws, prohibitions, or measures of any kind on the part of any governmental, parliamentary or local authority; (iv) Import or export regulations or embargoes; (v) Strikes, lockouts, or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party); (vi) Difficulties in obtaining raw materials, labor, fuel, parts or machinery; (vii) Power failure or breakdown in machinery.

**Order Cancellation and Contract Termination:** (a) The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation. (b) The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time in the event of: (i) The liquidation or insolvency of the Seller; or (ii) The appointment of a receiver or similar officer for the Seller; or (iii) The assignment by the Seller for the benefit of all or substantially all of its creditors; (iv) The entry by the Seller into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations; (v) The filing of a petition in bankruptcy by or against the Seller under any bankruptcy or debtors' law for its relief or reorganization which is not dismissed within ninety (90) days; (vi) The Seller ceasing, or threatening to cease, to carry on business; or (vii) The Buyer reasonably apprehending that any of the events mentioned above is about to occur in relation to the Seller and the Buyer notifies the Seller accordingly.

**Assignment or Transfer:** The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under the Contract.

**Successors and Assigns:** These terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

**Notices:** A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

**Attorney's Fees:** In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

**Governing Law:** The Contract, these Terms, and the Order shall be construed in accordance with, and all disputes shall be governed by, the laws of the State of Michigan, specifically including the provisions of the Uniform Commercial Code as adopted by that state, and the Seller agrees to submit to the jurisdiction of the courts of the State of Michigan in the event of any proceedings therein in connection herewith.

**Waiver:** No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

**Severability:** If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

**Entire Agreement:** The Contract, these Terms, the Order and any other documents mentioned herein constitute the entire agreement between the parties on this subject. All prior representations or arrangements on this subject matter are superseded by these Terms.