

Terms and Conditions

1. **EXCLUSIVE TERMS AND CONDITIONS:** Unless specifically modified by the terms on the face of the Proposal, the following are the terms and conditions governing the estimating services of Everest Estimating Services, LLC (“Everest”). If there is any conflict between these terms and conditions and the express terms on the Proposal hereof, the terms on the Proposal shall prevail. Acceptance of this Proposal by the Customer is EXPRESSLY LIMITED TO THE TERMS CONTAINED HEREIN, and Everest rejects any proposed different and/or additional terms. This Proposal, when accepted, will supersede, all prior agreements, whether written or oral, relating to the subject matter of this Proposal. No modification, amendment, extension, renewal, rescission, discharge, abandonment, waiver, or other change shall be binding on Everest unless agreed to in writing by both Everest and Customer.
2. **PROPOSAL AND ESTIMATE:** The Proposal contains estimates of fees, costs, prices and other expenses given hereof and is only based on the description of services and scope of work as stated in the Proposal. There may be circumstances that warrant an increase in the amount of any estimate of the estimate, so Everest reserves the right to do so, but will advise the Customer before undertaking any procedure that might increase any estimate given in the Proposal.
3. **SCOPE OF WORK:** Everest has no obligation to conduct any work outside of the scope of work as stated in the Proposal. If Everest, at its discretion, decides to conduct work outside the scope of work at the request of the Customer, Everest reserves the right to increase the amount of the original estimate as stated in paragraph 2 above.
4. **PAYMENT AND COLLECTION TERMS:** Payment for services are payable as stated on the face of this Proposal. Customer agrees to pay a late payment fee equal to two percent (2%) per month on any unpaid amount or balance, beginning on the date after the due date. Such late fee shall in no event exceed the lawful maximum permitted by the State of Missouri.
5. **RETAINER:** If a retainer is required under the Proposal, Customer understands that no service will be performed unless a retainer is provided. Everest is not liable for any delay in providing service to the Customer as a result of Customer’s untimeliness in providing a retainer. In addition, Customer understands and agrees that the retainer is non-refundable and is being used to reserve Everest’s time to provide the service as stated in the Proposal. If Everest’s services are needed outside the agreed to scheduled timing, Everest reserves the right to request an initial or additional retainer.
6. **SCHEDULED TIMING:** The scheduled timing as set forth in the Proposal is the best estimation of the timing of the service. Everest may not be liable for any damages of any kind or nature either directly or indirectly from its failure to meet such scheduled timing and Customer shall pay for any and all work performed by Everest, regardless of whether Everest fulfills the description of services as stated in the Proposal.
7. **LIMITATION ON LIABILITY:** Both Everest and Customer understand and agree that the entire liability to the Customer for any claim or loss arising from the service performed by Everest will be limited to a refund to the Customer of the amount paid for the service. Everest, under no circumstances, shall be liable for general, consequential, punitive, incidental or special damages arising from this Proposal or any acts of omissions of Everest.
8. **CANCELLATIONS:** Customer’s acceptance of this Proposal is final and binding and not subject to cancellation, except upon Everest’s sole discretion.
9. **INDEMNIFICATION:** Customer shall indemnify, defend and hold Everest and Everest’s representatives harmless from any and all claims, liabilities, damages, and expenses of any nature whatsoever, including actual attorneys’ fees, costs of investigation, court costs and any other expenses or costs arising from or relating to this Proposal.

10. **ASSIGNMENT:** Customer may not assign this Proposal or his/her duties hereunder without the prior written consent of Everest. Everest may assign this Proposal at any time.
11. **INVALID PROVISION:** The invalidity or unenforceability of a particular provision of this Proposal shall not affect the other provisions hereof, and the Proposal shall be construed in all respects as if such unenforceable or invalid provision were omitted.
12. **GOVERNING LAW:** This Proposal shall be construed and regulated under and by the laws of the State of Missouri.
13. **JURISDICTION:** Everest and Customer hereby consent to the exclusive jurisdiction of the courts of the State of Missouri and waive any contention that any such court is an improper venue for the enforcement of this Proposal. The prevailing party may recover attorneys' fees and other costs in any dispute or controversy arising under or in connection with this Proposal.
14. **COUNTERPARTS:** This Proposal may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
15. **NO WAIVER:** The failure of Everest to insist on the strict performance of the terms of this Proposal shall not be deemed to be a waiver of such terms or any rights or remedies which it might have in demanding strict performance of all the terms herein contained.
16. **ARBITRATION:** If any dispute arises out of this Proposal, and if the disputants cannot settle this dispute through negotiation, then upon notice by any disputant to the other, the disputants shall settle the dispute by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. St. Louis County, Missouri shall serve as the place of the arbitration. Neither party nor an arbitrator may disclose the existence, content or results of any arbitration proceeding. If one of the disputants is the prevailing party, the non-prevailing disputant shall reimburse all of the prevailing disputant's legal and arbitration fees and expenses. In every other case, a disputant shall, to the extent determined by the arbitrator, reimburse another disputant's legal and arbitration fees and expenses. The award of the arbitrators shall include a reasoned opinion. This Proposal involves interstate commerce and is therefore enforceable as provided in the Federal Arbitration Act, 9 U.S.C. § 1 et seq.
17. **FORCE MAJEURE:** Neither Everest or Customer shall be liable nor deemed in default for any delay, interruption or failure in performance under this Proposal deemed resulting, indirectly or directly, from Acts of God, civil or military authority, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, acts of terrorism, riots, civil disturbances, strike or other work interruptions by either Everest's or Customer's employees, or any similar or dissimilar cause beyond the reasonable control of either party.