

# CUSTOM ORDER

## TERMS AND CONDITIONS OF SALE

AS OF OCTOBER 21ST, 2021

### DEFINITIONS

1. In these Terms and Conditions the following terms shall have the following meanings: 'Company' means Parabit Systems, Inc. 'Customer' means any legal person or body corporate whose Order is accepted by the Company. 'Contract' means any contract for the supply of Goods or Services by the Company to the Customer. 'Goods' means any goods forming the subject of this contract including parts and components of or materials incorporated in them. 'Services' means any services forming the subject of this contract. 'Kiosks and Custom Orders' shall mean the design of a kiosk or Custom Order to be developed by Company pursuant to this Agreement in accordance with the Customer's specifications, together with other documentation and any other ancillary materials to be developed by Company pursuant hereto.

### QUOTATION

2. Quotations by the Company, unless otherwise stated, shall be valid for thirty (30) days from the date of the quotation.

### EXISTENCE OF CONTRACT

3.1 No Contract shall come into existence, nor will fabrication of Kiosk or Custom Order commence (including quoted Lead Time) until the Customer's order (however given) is accepted by the earliest of:

- The company's written acceptance of customer's Purchase Order(which must contain company's Sales Order number on the PO Including receipt of deposit, or
- Delivery of the Goods or Services, or
- The company's invoice

3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.

3.3 No variation or amendment of this document or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

### PRICES

4.1 The Prices for the Goods or Services exclude Packaging, Insurance, Shipping, Sales Tax, Installation, Custom Colors and Decals/Graphic Vinyl Wraps (custom colors /graphics are available at an additional charge), Duty, VAT, Export / Import Fees, Broker Fees and Customs Fees.

4.2 The Company shall have the right to adjust its prices for any increase in the price of materials, parts, labor, and transport, changes in work of delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract.

4.3 Custom Kiosk Manuals (Customized to Customer's selected peripheral set) will billed in one-hour increments at a rate of \$250 per hour.

4.4 Company's rendering labor for Kiosk Sample Book is \$150 an hour, with a minimum of 2 hours per kiosk. Sample book itemizes all project requirements including color and finish, branding, peripherals, etc. Requires Customer's approval. Price includes one revision. If additional revisions are required, Customer will be invoiced in hourly increments.

## **PAYMENT**

- 5.1 A 75% deposit is required to begin fabrication, with full payment due prior to shipping.
- 5.2 All invoices are payable without discount of any kind in U.S. Dollars on or before the date stated on the Company's invoice and under no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason.
- 5.3 If the Customer fails to pay the invoice price by the due date, then Customer shall pay interest on any overdue amount from the date of which payment was due to that on which it is made (whether before or after judgement) on a daily basis at a rate of 1.5% and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- 5.4 Final payment is due by the invoiced date, even if Customer delays delivery of the order.

## **TITLE**

- 6.1 The Company shall transfer only such title or rights in respect of the Goods or Services as the Company has and if the Goods or Services are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Goods and Services.
- 6.2 Notwithstanding the earlier passing of risk title in the Goods or Services shall remain with the Company and shall not pass to the Customer until the amount due under the invoice (including interest and cost) has been paid in full.
- 6.4 Until title passes the entire proceeds of the sale of the Goods or Services shall be held in trust for the Customer and shall be held in a separate designed account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.
- 6.5 The Company may maintain an action for the price of any Goods or Services notwithstanding that title in them has not passed to the Customer.

## **RISK, SHIPPING AND DELIVERY**

- 7.1 Risk in the Goods or Services passes when they are delivered to the Carrier.
- 7.2 The Company may at its discretion deliver the Goods or Services by installments in any sequence.
- 7.3 Where the Goods or Services are delivered by installments, no default or failure by the Company in respect of any one or more installments shall invalidate the Contract in respect of the Goods or Services previously delivered or undelivered Goods or Services.
- 7.4 Any dates quoted by the Company for the delivery of the Goods or Services and performance of the Services are approximations only.
- 7.5 If the Customer delays the development of the Goods or fails to take delivery of the Goods or Services or any part of them on the due date and to provide any instructions or documents required to enable the Goods or Services to be delivered on the due date, the Company may on giving written notice to the Customer store or arrange for the storage of the Goods or Services, and on the service of the notice, risk in the Goods or Services shall pass to the customer, delivery of the Goods or Services shall be deemed to have been taken place, and the Customer shall pay to the Company all costs and expenses including storage and insurance charges of twenty-five dollars (\$25) a day per Good arising from its failure.
- 7.6 The Company shall not be liable for any penalty, loss, injury, damage, or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.
- . Shipping will be requoted and invoiced with Customer's final payment.
- 7.8 No inside delivery. Delivery to curbside or loading dock. Customer is responsible for discarding the shipping material and crate.
- 7.9 External factors outside of the control of Company (such as weather, regional tensions, pandemics, and other natural catastrophes) may cause a delay in the delivery of the product(s).

## CLAIMS NOTIFICATION & WARRANTY PERIODS

8.1 Parabit must receive written notification within three (3) business days after the Delivery Date of any shipment not containing all items listed on the shipment's packing list. If merchandise is delivered in damaged condition or cartons/items are missing, a notation must be placed on all papers signed by the receiver, and pictures taken if applicable. If unreported or concealed damages are noticed after delivery, the carrier should be contacted, with a copy of such request sent to Parabit. All requests for credit due to transportation loss or damage should be accompanied by properly signed papers. A claim for loss or damage must be filed with the carrier within thirty (30) days from the shipping date for common carriers. Credit is not allowed for late or improperly substantiated damage claims.

8.2 Warranty periods:

- for Goods or Services manufactured by the Company 12 months from the date of delivery;
- for International Goods or Services manufactured by the Company 24 months from the date of delivery;
- for Goods or Services not of the Company's manufacture the warranty period given by the manufacturer.

8.3 Any claim under this condition must be in writing and must contain full details of the claim including the reference numbers of any allegedly defective Goods or Services.

8.4 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall if so requested in writing by the Company promptly return any Goods or Services the subject of any claim and any packing materials securely packed and paid to the Company for examination.

8.5 Service warranty requires service be performed by a certified Technician trained by the Company. Company will provide four (4) hours of remote phone consultative support as needed, with additional support available at Company's then billable support rate.

8.6 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claim's procedures in these conditions.

## EXTENT OF LIABILITY

Under no circumstances shall the Company have any liability of whatever kind for:

9.1 Any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or Services or Goods or Services or neglect or from any instructions or materials provided by the Customer.

9.2 Any Goods or Services which have been adjusted, modified, or repaired except by the Company.

9.3 Any technical information, recommendations, statements, or advice furnished by the Company its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made, or

9.4 Any variations in the quantities or dimension of any Goods or Services or changes of their specifications or substitution of any materials or components; if the variation or substitution does not materially effect the characteristics of the Goods or services, and the substituted materials or components are of a quality equal or superior to those originally specified.

9.5 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any way of or in connection with the performance of or failure to perform the Contract except for death or personal injury resulting from the Company's negligence, and expressly stated in these conditions.

9.6 If the Customer establishes that any Goods or Services have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description the Company shall, at its option, replace with similar Goods or Services any Goods or services which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value, or repair any damaged Goods or Services.

- 9.7 If the Customer establishes that any Goods or Services are defective the Customer must return those Goods or Services forthwith, at its own cost, to the Company which will be repaired or replaced at the Company's discretion and according to manufacturer's warranty. If the Goods or Services cannot be replaced or repaired within 3 months of the Company's receipt thereof the Company may credit the Customer in part or in full at its own discretion.
- 9.8 If the Customer returns to the Company any Goods or Services for repair and some are found to be fault free then the Company may, at its own discretion, charge the Customer for its reasonable testing and handling costs.
- 9.9 The delivery of any repaired or replacement Goods or Services shall be at the Company's premises.
- 9.10 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods or Services the Contract shall remain in full force and effect in respect of the other or other parts of the Goods or Services and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods or Services.
- 9.11 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustment's, alterations to other work has been done to the Goods or Services by any person except the Company.
- 9.12 The Company shall not be liable where any Goods or Services the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such or lost or damaged Goods or Services will, if available, be supplied by the Company at the prices ruling at the date of dispatch.
- 9.13 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods or Services.

## GENERAL

- 10.1 The Customer shall not assign or (without first obtaining the Company's written consent) sub-let these Terms and Conditions or the Contract in whole or in part and it shall be a condition of any such consent to any sub-letting of these Terms and Conditions or the Contract that the Customer shall:
- Ensure and be responsible for the compliance by any sub-contractors with the terms of his contract;
  - Include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Company; and
  - Furnish the Company with copies of any sub-contract upon the Company's request at any time.
- 10.2 The Company may at its discretion suspend or terminate the supply of any Goods or Services if the Customer fails to make any payment when and as due or otherwise defaults in any its obligations under this Contract or any other contract with the Company or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or the Company shall be discharged of any liability in respect of the Customer's property.
- 10.3 If the Goods or Services are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall compensate the Company in full on demand for all claims, expenses, and liabilities of any nature in connection with them, including any claim, whether actual or alleged that the design or specification infringes the rights of any third party.
- 10.4 Except for any which is expressly agreed to be included in the Goods and Services all tools, patterns, materials, drawings, specifications, and other data provided by the Company shall remain its property and all execution of any orders shall become the property of the Company.

## CONFIDENTIALITY

11. The Customer shall not at any time whether before or after the termination of this Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the company's affairs or business method of carrying on business.

## CANCELLATION

12. Kiosks are built to order in a Customer specified configuration and Customer specified colors. Orders for Goods or Services which have to be made especially for the Customer cannot be cancelled or sold to anyone other than the Customer requesting the product.

## PERIPHERALS & SOFTWARE

13.1 Applications other than the manufacturers' device drivers required for operating and/or interfacing to with Customer's Application will be provided at an additional cost. Loading of applications not specified at the time of acceptance will be invoiced at \$195.00 per hour (billable in one-hour increments).

13.2 Company is not responsible for: Software licenses, device drivers or integration with peripheral devices.

13.3 IF APPLICABLE: Integration of software applications requested by the Customer will be provided at an additional cost of \$250.00 per hour (billable in one-hour increments).

## ELECTRICAL & DATA CONNECTION REQUIREMENTS

14.1 If Customer contracts Company to install the Equipment at Customer's designated site, Customer will ensure that the site meets any electrical wiring, air conditioning, power, or other environmental requirements. Company will inspect the site and give notice to Customer of any ways the site does not comply with the environmental requirements for the Equipment.

14.2 Kiosk requires one standard duplex outlet (110/220 VAC circuit) within 2 feet of the kiosk's final placement.

14.3 Ethernet cable (with an RJ45) should be located within 2 feet of the kiosk's final placement.

## CHANGE ORDERS

15. In the event Customer desires to make any modifications to the Product Specifications or a deliverable, Customer must provide a detailed change order in writing. This may be provided in the form of email, certified letter, or via technologies and or tools provided by Parabit. In the event of a conflict between the terms of this Agreement and a Change Order, the terms of this Agreement shall govern.

## CUSTOM BRANDING

16. Powder Coating: Supports one branded color matched to standard powder coat options. If custom colors or more than one color is requested, additional fees apply.

1. If using more than one color:

a. Painting Labor is invoiced at a rate of \$150 an hour: 2 color powder coating fee assessed at 1 hour per kiosk b.

Vinyl Graphic application is invoiced at a rate of \$150 an hour.

## INSTALLATION AND TRAINING

17.1 Company Installer Labor: 1 Technician - 1 full day (8 hours) onsite for installation and training for up to 8 Customer representatives.

17.2 Kiosk Installation Services requires Company's authorized on-site staff to have temporary Admin Rights and Network Access to facilitate the efficient installation of the Kiosk's hardware and software. Customer will be billed in one-hour increments for failure to provide the necessary access or if insufficient end-user resources result in extended installation time.

17.3 Customer will incur additional labor, transportation and/or any other related material charges, due to additional visits or additional man-hours to complete an installation as a result of Customer's support personnel, third-party personnel, or location requirements not available at time of the initial scheduled visit.

17.4 Subject to the terms and conditions, Company grants authorized Resellers a limited, nonexclusive, nontransferable license, without the right to sublicense, to install, without modification, Products that are purchased in accordance with the terms of this Agreement. Company is not responsible for any errors or technical support issues related to Reseller's installation. The Reseller will, and is responsible for, providing technical support for its Customers (including warranty claims). Reseller will be billed at Parabit's then current service rate, should Reseller need to utilize Parabit's technical support staff. The Reseller will select technical contacts that have been certified in the operation of the Company's Products. Reseller will ensure that its support personnel receive mandatory training relating to the Products.

### **FORCE MAJEURE**

18. The Company shall not be liable for any act or omission arising which shall render performance of the Contract impossible or shall in any way have the effect of frustrating the common cause where such act or omission is beyond the control of either the Company or the Customer or was not reasonably foreseeable by them. Such acts or omissions shall have the effect of automatically terminating the contract.

### **LAW AND JURISDICTION**

19. All matters arising out of or relating to these Terms shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its conflict of laws rules and without regard to the United Nations Convention on the International Sale of Goods. Any dispute shall be adjudicated solely in federal or state courts within the State of New York, Nassau County. Customer consents to the venue and jurisdiction of such courts and waives any claim or defense based on forum non conveniens or personal jurisdiction.

### **LIMITED WARRANTY CONDITIONS LIMITATIONS, AND EXCLUSIONS**

20. No limited warranty is provided by Company unless the Product is purchased from an authorized distributor or authorized reseller. Integrators may sell Products to end users. No Warranty service is provided unless Customer complies with all Company Terms & Conditions and Company procedures with respect to same. Product must be returned to Company's Roosevelt, NY facility. If the Product was purchased as a component integrated within a system, and that Product was manufactured by another system integrator or manufacturer, no Warranty is provided by Company and the Product is sold as is. Please contact the place of purchase or the other system integrator or manufacturer directly for warranty service.

### **LIMITED WARRANTY**

Company's limited warranty ("Warranty") provides that, subject to the following limitations, each Product will be free from material defects in material and workmanship and will conform to Company's specification for the particular Product. The Warranty extends only to the original Customer, not for the benefit of anyone else, and Company warrants that the Product(s) at the time of delivery by Company are free of material defect in materials and/or workmanship under normal and proper conditions for a period of twelve (12) months from the shipping date. If a Product or component fails due to defects in materials and/or workmanship within the warranty period, Company, in its sole and exclusive discretion, will furnish an equivalent Product or component. Company will ship the replacement via economy shipping/freight. If requested by Company, the Customer is responsible for expedited shipping/freight charges. Company shall not be responsible for labor or other costs associated with installing the component, and the failed component must be returned to Company at the Customer's sole cost and expense. Products must be installed by a service technician authorized by Company in order to maintain this Product Warranty, which authorization requires all service technicians to have completed the most recent Company on-line or in-school training course. Technician Software will only be distributed to Technicians who are certified by Company after the Technician passes Company's Technical Training.

Any attempt to install, repair or replace any component by anyone other than a service technician authorized by Company, will void the product's Warranty in its entirety. Company shall not be responsible for misuse or abuse of a unit, and any attempts to remove or deface the serial number on a unit or any component thereof, or any attempt to repair a unit or to repair or replace any component by anyone other than a service technician authorized by Company shall void this Warranty in its entirety. In the United States, some states do not allow limitations on how long implied warranties last, so the above limitation may not apply, and Company's potential liability is as limited as possible under the law. This Warranty covers normal use under normal and proper conditions. Company does not warrant or cover damage: occurring during shipment of the Product or components from or to Company's facility; caused by accident, impact with other objects, dropping, falls, spilled liquids, or immersion in liquids; caused by a disaster such as fire, flood, wind, earthquake, lightning, or other acts of God; caused by improper training of the installer; caused by improper installation of firmware, software, and the like; caused by failure to provide a suitable or proper installation environment for the Product, including but not limited to, faulty wiring in the building in which the Product is installed, installation in a facility with uncontrolled environmental conditions, failure to provide a dedicated electrical circuit on which the Product operates, and/or lack of proper earth grounding for the Product; caused by the use of the Product for purposes other than those for which it was designed; resulting from improper maintenance; and caused by any other abuse, misuse, mishandling, or misapplication. This Warranty will be void if the goods are installed improperly or in an improper environment, overloaded, misused, opened, abused, or altered in any manner, or are not used under normal operating conditions or not in accordance with any labels or instructions. There are no other warranties (express or implied) of any kind, including merchantability and fitness for a particular purpose, but if any implied warranty is required by the applicable jurisdiction, the duration of any such implied warranty, including merchantability and fitness for a particular purpose, is limited to one year. Company is not liable for incidental, indirect, special, or consequential damages, including without limitation, damage to, or loss of use of, any equipment, lost sales or profits or delay or failure to perform this warranty obligation. The remedies provided herein are the exclusive remedies under this warranty, whether based on contract, tort or otherwise.

COMPANY DOES NOT WARRANT OR GUARANTEE THAT THE PRODUCTS' OPERATION WILL BE FAILSAFE, UNINTERRUPTED, OR FREE FROM ERRORS OR DEFECTS, OR THAT THE PRODUCT WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS (INCLUDING INTENTIONAL MISCONDUCT BY THIRD PARTIES), THAT THERE WILL BE NO MALFUNCTIONS OR OTHER ERRORS IN THE PRODUCT CAUSED BY VIRUS, INFECTION, WORM OR SIMILAR MALICIOUS CODE NOT INTRODUCED OR DEVELOPED BY COMPANY, OR THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS. COMPANY IS NOT LIABLE FOR ANY DOWNTIME OR SERVICE INTERRUPTION, FOR ANY LOST OR STOLEN DATA OR SYSTEMS, OR FOR ANY OTHER DAMAGES ARISING OUT OF OR RELATING TO ANY ACTIONS OR INTRUSIONS.

DISCLAIMER OF ALL OTHER WARRANTIES: There are no warranties which extend beyond the face of the Company Warranty. In addition to all other provisions of this Warranty, Company disclaims all other warranties, express or implied, regarding the Products, including any implied warranties of merchantability, fitness for a particular purpose or non-infringement. In the United States, some laws do not allow the exclusion of the implied warranties. Company will have no liability for any Product returned if it is determined that: a) the product was stolen from Company, b) the asserted defect is not present, c) the Product cannot reasonably be fixed because of damage occurring when the Product is in the possession of someone other than Company, or d) is attributable to misuse, improper installation, alteration (including removing or obliterating labels), accident or mishandling while in the possession of someone other than Company. No oral or written information or advice given by Company, its agents, or employees shall create a warranty or in any way increase the scope of this Warranty.

LIMITATION OF REMEDIES AND DAMAGES: YOUR EXCLUSIVE REMEDY FOR ANY DEFECTIVE PRODUCT IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT. COMPANY MAY ELECT WHICH REMEDY OR COMBINATION OF REMEDIES TO PROVIDE IN ITS SOLE DISCRETION. COMPANY SHALL HAVE A REASONABLE TIME AFTER DETERMINING THAT A DEFECTIVE PRODUCT EXISTS TO REPAIR OR REPLACE A DEFECTIVE PRODUCT. COMPANY'S REPLACEMENT PRODUCT UNDER ITS WARRANTY MAY BE MANUFACTURED FROM NEW AND SERVICEABLE USED PARTS. COMPANY'S WARRANTY APPLIES TO REPAIRED OR REPLACED PRODUCTS FOR THE BALANCE OF THE APPLICABLE PERIOD OF THE ORIGINAL WARRANTY OR NINETY DAYS FROM THE DATE OF SHIPMENT OF A REPAIRED OR REPLACED PRODUCT, WHICHEVER IS LONGER. COMPANY'S ENTIRE LIABILITY FOR ANY DEFECTIVE PRODUCT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE FOR THE DEFECTIVE PRODUCT. THIS LIMITATION APPLIES EVEN IF COMPANY CANNOT OR DOES NOT REPAIR OR REPLACE ANY DEFECTIVE PRODUCT AND CUSTOMER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL COMPANY OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT, OR ANY ASSOCIATED PRODUCT, OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT PRODUCT, FACILITIES OR SERVICES, DOWNTIME, CUSTOMER'S TIME, THE CLAIMS OF THIRD PARTIES, INCLUDING CUSTOMERS, AND INJURY TO PROPERTY.