

## **IP PARKING NA INTERNATIONAL GENERAL TERMS AND CONDITIONS**

### **1. Definitions**

- a. **Agreement:**  
shall mean any agreement between Customer and IP Parking for the delivery of Products, including, but not limited to, an order confirmation for, the sale and installation agreement or service level agreement.
- b. **IP Parking:**  
IP Parking NA, Inc. a Delaware corporation with whom Customer deals or contracts with.
- c. **Customer(s):**  
shall mean any natural person or company, including distributors and resellers, with whom IP Parking and its employees deal in the course of its business, including representative(s), agent(s), successor(s) and including visitors of its website.
- d. **Product(s):**  
shall mean any or all of IP Parking's products and services.

### **2. Applicability**

These general terms and conditions apply to all offers of IP Parking and exclusively govern the relationship between IP Parking and Customers. No other terms and conditions shall be binding upon IP Parking unless accepted by it in writing. IP Parking expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind IP Parking.

### **3. Offers**

All offers by IP Parking are non-binding and may be revoked at any time, unless IP Parking stated otherwise in writing. Any amendments made by IP Parking in writing or verbally, shall entail a new offer, automatically revoking the previous offer. Any amendments by Customer of an IP Parking offer, will be deemed a new offer by Customer, which IP Parking may accept or reject at its sole discretion.

### **4. Products, Prices and Taxes**

- a. Product configurations and prices are subject to change at any time.
- b. Prices are based on delivery ex warehouse/works at the location as set forth the Agreement, Incoterms 2010, unless otherwise agreed in writing, and do not include delivery and service costs.
- c. All listed and quoted prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on IP Parking or on Customer by any taxing authority (other than taxes imposed on IP Parking's income), related to Customer's order, unless Customer has provided IP Parking with an appropriate resale or exemption certificate for the delivery location, which is the location where IP Parking transfers title or possession of Products to Customer.
- d. The prices quoted are in U.S. dollars, or in another currency if stated by IP Parking in writing. Customer shall bear any exchange rate risk, unless otherwise agreed in writing.

### **5. Orders, Shipping, Delivery, Risk of Loss, Transfer of Title**

- a. All orders are subject to product availability.
- b. Customer is aware that Products may be shipped internationally through third party carriers and that delivery times and dates are merely estimates. **IP PARKING CANNOT BE HELD LIABLE FOR ANY DAMAGES AS A RESULT OF DELAY IN DELIVERY OF PRODUCTS.**
- c. Unless otherwise agreed in writing, delivery shall be made ex warehouse/works at the location as set forth the Agreement, Incoterms 2010. IP Parking is entitled to make partial deliveries. Customer must accept delivery of Products during normal business hours, failing which all costs

arising thereof (including storage charges and freight charges) shall be charged in conformity with IP Parking's rates or local rates.

- d. The risk of loss or damage of Products shall pass to Customer at the moment of delivery ex warehouse/works, even if IP Parking has not yet transferred the ownership thereof.
- e. Title to a Product will transfer to Customer immediately after the full purchase price has been received by IP Parking, provided that Customer is not otherwise in default of the purchase agreement and these terms and conditions.

## **6. Inspection, Acceptance of Products, Returns**

- a. Claims in connection to shortages or errors in shipping must be reported to IP Parking within two (2) days of receipt of such shipment. If Customer fails to report timely, IP Parking will have no obligation to correct such shipments, unless Customer bears all the expenses thereof.
- b. Immediately upon receipt of a Product, Customer shall test and inspect it for defects and non-conformance with the written specifications provided by IP Parking and will notify IP Parking in writing within seven (7) days of receipt of a Product, of any defects or non-conformance. After such seven (7) day period, Customer shall be deemed to have irrevocably accepted the Products, if not already previously accepted. After acceptance, Customer shall have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that a seven (7) day period is a reasonable amount of time for inspection and revocation.
- c. **THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE PRODUCTS IS THE REPLACEMENT OR REPAIR AT IP PARKING'S SOLE DISCRETION, OF SUCH PRODUCTS OR PARTS OF SUCH PRODUCTS, AT NO COSTS FOR CUSTOMER.**

## **7. Payments**

- a. All payments under this agreement shall be effected in U.S. dollars, or in any other currency as agreed to in writing.
- b. Customer agrees to pay, without the right to set-off any amounts, all invoiced amounts within thirty (30) days of the invoice date. However, all amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any Federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- c. Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- d. Payments made by Customer shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.
- e. Customer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged defects of Products or on any other account whatsoever.
- f. IP Parking may require a purchase money security interest or letters of credit, or any other form of security, at all times. If requested by IP Parking, Customer will authorize IP Parking to file a financing statement reflecting a purchase money security interest and Customer will record such purchase money security interest on its books. If Customer does not meet IP Parking's request to provide security, IP Parking shall be entitled to terminate the agreement or to suspend its obligations.

## **8. Suspension of Performance**

IP Parking is entitled to suspend its performance (including future partial deliveries) if Customer fails to meet any of its obligations, or if IP Parking reasonably expects that Customer will not fulfil its obligations.

## **9. Representations and Warranties**

- a. IP Parking represents and warrants that for a period of 1 (one) year as of the date of invoice, Products materially meet the specifications and specifically agreed upon quality, both as stated in the applicable datasheet and/or written design-in specifications, or as stated in writing otherwise by IP Parking, provided that these specifications are explicitly designated by IP Parking as “warranted specifications”.
- b. IP Parking represents and warrants that to the best of its knowledge, the Products do not infringe, misappropriate or otherwise violate any intellectual property right of any third party.
- c. The representations and warranties hereunder do not cover faults or damages arising from natural wear and tear, faulty or careless treatment, faulty and unauthorized commissioning, installation or setting into operation by Customer or a third party, improper storage or unloading and unauthorized unpacking of Products, improper or defective environmental circumstances and unauthorized relocation of Products. Unauthorized modifications, repairs, or additions to Products, modifications of and/or additions to IP Parking software, and wrong maintenance or maintenance by unauthorized people shall invalidate all warranties in connection thereto.
- d. The rights of the Customer with respect to this warranty clause are restricted to a lack of conformity caused by defects, faulty materials and failures in the Products or workmanship which appear under proper use, in conformity with the IP Parking manual(s).
- e. A warranty period of 3 (three) months is applicable to repairs conducted by or on behalf of IP Parking. No additional warranty period is applicable to replaced parts, but the warranty mentioned in section 9.a. on the original Product, will include those parts. Defective parts shall become IP Parking’s property as soon as they have been replaced. No warranties are made in connection to consumables and/or spare parts.
- f. EXCEPT AS UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, IP PARKING MAKES NO REPRESENTATIONS OR WARRANTIES IN CONNECTION TO ITS PRODUCTS, INCLUDING WARRANTIES ABOUT ITS PRODUCTS’ MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT (WHETHER EXPRESS, IMPLIED OR STATUTORY), UNLESS EXPLICITLY MADE AND PROVIDED BY IP PARKING IN WRITING TO CUSTOMER.

## **10. Liability and Limitation of Damages**

- a. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGIES OR SERVICES OR COST OF COVER) IN CONNECTION WITH OR ARISING OUT OF THE RELATIONSHIP BETWEEN THE PARTIES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IP PARKING’S MAXIMUM AGGREGATE LIABILITY FOR ANY CAUSES WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WILL AT ALL TIMES BE LIMITED TO FIFTY (50) PERCENT OF THE PURCHASE AMOUNTS PAID TO IP PARKING IN CONNECTION TO THE PRODUCTS SUBJECT TO THE CLAIM.
- b. Customer agrees to defend and indemnify IP Parking, its present and future officers, directors, shareholders, employees and agents, and to hold each of them harmless from and against any claim, demands, causes of action, damages, liabilities, costs and expenses, including reasonable attorney’s fees, arising from (i) Customer’s or its customer’s specific use of a Product, including product liability claims or actions, unless such action is solely related to the Product itself and has no bearing with the use or combination with other products, (ii) unauthorized maintenance, repairs or modification of Products by or on behalf of Customer or its customers, or (iii) Products that are

out of the ordinary course of business of IP Parking and that were explicitly requested and/or designed by Customer.

- c. Customer undertakes and agrees to obtain and keep in full force and effect at all times valid policies of insurance against all liabilities, risks and losses (including but not limited to the losses caused by any unlawful act on the part of any person, liabilities based on product liability claims) in respect of Customer's business relating to the Products.

## **11. Confidential Information**

- a. Confidential Information means (i) the existence and terms of any purchase agreement and (ii) any non-public, confidential or proprietary information relating to a disclosing party, whether or not technical in nature, including any that is designated by the disclosing party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving party; (ii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving party at the time of disclosure by the disclosing party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing party; or (v) is developed independently and separately by either party without use of the disclosing party's Confidential Information.
- b. Each party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other party and that it will observe the same due care with respect to such information as they would observe with respect to its own Confidential Information. The other party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without the disclosing party's prior written consent, which consent may be granted or withheld in such party's sole and absolute discretion.
- c. Each party agrees that it will restrict the circle of employees or third parties it retains who have access to the other party's Confidential Information as much as possible and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in this Agreement.
- d. Immediately following the receipt of a written request to this effect by the disclosing party the receiving party will return any and all Confidential Information received from the disclosing party or destroy such Confidential Information, if the disclosing party so requests.

## **12. Intellectual Property and Use**

- a. All intellectual property rights, including, but not limited to, patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentation, in relation to the Products, including modifications thereto, delivered and/or used by IP Parking, are owned by IP Parking or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if products have been specifically designed or developed for Customer.
- b. Unless otherwise agreed in writing, Customer may not make repairs or modifications to the Products nor allow or enable any unauthorized third parties to do so.
- c. Unless otherwise agreed in writing, Customer shall not be permitted to (i) affix any trademark to the Products, (ii) remove any copyright, trademark or other proprietary rights notices on the Product, (iii) use IP Parking's mark in any way, (iv) register any of IP Parking intellectual property in Customer's own name, and (v) register any patent involving, based upon, or for any of the Products.
- d. Customer understands and hereby accepts that the source code related to any of the IP Parking software shall not be made available to Customer. Unless otherwise agreed in writing, IP Parking shall not be required to provide Customer any program or data libraries.

- e. IP Parking may implement upgrades and/or make updates available from time to time with regard to the software, but is under no obligation to do so. Customer is required to use the latest upgrades and updates of the software provided by IP Parking to Customer.
- f. Customer shall observe any restrictions of use of the software as provided in these terms and conditions and any Agreement. Customer understands that the violation of an agreed restriction of use shall constitute both breach of contract with IP Parking and infringement of the intellectual property rights in the software.
- g. Unless otherwise agreed in writing, Customer is strictly prohibited from selling, multiplying, or otherwise exploiting or assigning its right of use, or encumbering the same, or otherwise putting the software in the possession or use of a third party in any way.
- h. IP Parking shall be permitted to install technical provisions for the purpose of protecting the software, hardware, data files and websites in relation to an agreed restriction on the content or use of the software, and Customer is not permitted to remove or circumvent such technical provisions or allow third parties to do so.
- i. Customer shall undertake to take precautions to prevent unauthorized access by third parties to the Products. Customer shall notify its employees and any contractors of the necessity to observe all restrictions as set forth herein.

### **13. Force Majeure**

IP Parking will not be liable for any delay in performing or failure to perform any of its obligations under this agreement caused by events beyond its reasonable control. IP Parking will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

### **14. Severability**

If any provision of these terms and conditions or any other agreement between the parties is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

### **15. Further Assurances**

Each of the parties covenants and agrees on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of these terms or any other agreement between the parties.

### **16. No Beneficiaries**

Any agreement between the parties is for the sole benefit of the parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the parties thereto, any legal or equitable rights thereunder.

### **17. No Partnership**

Nothing contained in any agreement between the parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the parties. Neither of the parties may pledge or purport to pledge the credit of the other party or make or purport to make any representations, warranties, or undertakings for the other party.

### **18. Conflicting Terms**

In the event of conflicting terms between these terms and conditions and any Agreement, the terms of the Agreement will prevail.

### **19. Governing Law and Jurisdiction**

Unless stated otherwise in writing, all agreements shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. With respect to any disputes arising between the parties, parties hereby submit exclusively to the personal jurisdiction of the Federal courts in New York, New York. The parties consent and agree that each such court is a convenient forum for, and has proper venue over, the resolution of all legal actions, proceedings and disputes arising out of or relating to their relationship. ANY CAUSE OF ACTION AGAINST IP PARKING, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH ACTION IS PERMANENTLY BARRED.