

## Talk-A-Phone Terms and Conditions and Limited Warranty

**Last Updated: 7/17/2024**

1. Acceptance.

These terms and conditions govern sales of products (“Product” or “Products”) and/or services (“Service“ or “Services”) under any purchase order issued to Talk-A-Phone, LLC or Talk-A-Phone Service Co., LLC (collectively, “Talk-A-Phone”) by a customer (collectively with any end-user of the Products or Services, “Customer”). These terms and conditions set forth herein together with any additional terms and conditions provided by Talk-A-Phone to Customer (collectively the “Governing Terms”), are in lieu of, replace and supersede any and all terms and conditions set forth on Customer’s request for quotation, purchase order, applicable specifications, or any other document provided by Customer. Any additional, different, or conflicting terms or conditions provided by Customer shall not be binding in any way on Talk-A-Phone. If Customer has not otherwise accepted the Governing Terms, then Customer’s acceptance or delivery of, or payment for, the products and/or services shall constitute Customer’s acceptance of the governing terms. No waiver or amendment of any of the provisions of the Governing Terms shall be binding on Talk-A-Phone unless in a writing and signed by the parties. Customer further acknowledges and agrees that Talk-A-Phone may amend, any or all of these Terms and Conditions at any time without notice, and that Customer’s relationship with Talk-A-Phone will be governed by these Terms and Conditions, as amended. Any amendment will be reflected on Talk-A-Phone’s website and Customer is encouraged to periodically review the Terms and Conditions posted on the website.

2. Terms of Payment.

Unless otherwise stated in the written quotation from Talk-A-Phone to Customer, all invoices for Products and/or Services are due and payable thirty (30) days from the date of invoice. Past due accounts will be charged interest at an annual rate of twelve percent (12%), or the maximum rate permitted by applicable law, whichever is lower. Talk-A-Phone retains a purchase money security interest under the Uniform Commercial Code in each state in which performance is to take place in the Products sold until payment in full has been made. In the event of default by Customer under this Agreement, Talk-A-Phone shall have all the rights and remedies of a secured creditor under the aforementioned UCC provisions. Customer agrees to execute such financing statements and other documents as Talk-A-Phone may request in order to perfect Talk-A-Phone’s security interest. All deliveries of Products and performance of Services shall at all times remain subject to the credit approval by Talk-A-Phone, and Talk-A-Phone may at any time decline to make any shipments or deliveries, or perform any services, pending receipt of payment or the provision of adequate assurance satisfactory to Talk-A-Phone.

3. Prices.

Product prices are Ex Works Talk-A-Phone’s facility, and all transportation costs are the responsibility of Customer, unless otherwise agreed to in writing by Talk-A-Phone. All prices are in United States dollars. Prices do not include any applicable sales or use taxes, tariffs, customs and other duties and other similar taxes and charges, applicable to the finished Products, which shall be the responsibility of Customer and added to the stated Product prices if paid for by Talk-A-Phone.

4. Ordering.

Purchase Order shall mean: a. an order for a specific quantity of Products (“Standalone Order”) or b. a blanket purchase order for a specific quantity of Products under which written paper or electronic releases are issued setting forth product delivery requirements for which Talk-A-Phone must accept each such release in writing (“Blanket Order”). A Standalone Order and Blanket Order are collectively referred to as an ‘Order’. The pricing, time frame for delivery time, ordering quantities and other specific ordering criteria shall be set forth in the applicable Order. Talk-A-Phone shall have no obligation to supply Products with shorter delivery times or larger order quantities than specified in the Order.

5. Delivery and Quantity Verification.

a. Delivery of Product is Ex Works Talk-A-Phone's facility. Delivery shall be deemed complete at point of loading onto carrier at Talk-A-Phone's loading dock. Upon delivery of the Products as contemplated herein, title to Products will pass to Customer who will then be solely responsible for and bear the entire risk of any loss or damage to the Products. Customer shall be responsible for all costs of transportation and insurance of Products from point of origin.

b. Customer is responsible for providing written instructions related to shipping and packaging for all Product shipments, both domestic and export.

c. Talk-A-Phone will use commercially reasonable efforts to make all deliveries, whether full or partial, in accordance with the delivery schedule set forth on the face of the Order or contained in written releases pursuant to valid Blanket Orders from Customer issued within stated lead times for ordering Products.

d. Customer shall have fifteen days from date of receipt of Products to inspect and notify Talk-A-Phone of any inaccuracies in quantities shipped, failing which, such quantities shall be deemed to be accurate.

e. Customer may, upon reasonable advance notice to Talk-A-Phone, inspect production processes and property during normal business hours and, subject to Talk-A-Phone's prior written approval, conduct testing at Talk-A-Phone's premises for the sole purpose of verifying Talk-A-Phone's performance under the Contract. Talk-A-Phone may restrict Customer's access as necessary to protect proprietary information and may require appropriate confidential protection covenants, indemnification and releases.

6. Cancellation and Returns.

No Order or release may be cancelled and no Products sold may be returned without the written consent of Talk-A-Phone. With Talk-A-Phone's prior consent, unused standard merchandise in unopened factory cartons may be returned for up to 90 days from date of purchase and is subject to a 15% restocking charge. Custom-made equipment, such as painted towers and pedestals, is non-returnable. Freight and insurance must be prepaid by the shipper. Upon receipt of any such Products during the applicable warranty period, Talk-A-Phone shall examine the Product to verify the alleged defect and determine in its sole discretion whether to repair or replace such Product.

7. Limited Warranty.

a. Products supplied by Talk-A-Phone shall at the time of delivery:

i. Be free and clear of all liens, claims and encumbrances of any creditor of Talk-A-Phone;

ii. Be free from material defects in workmanship and materials, excluding any defects caused by normal wear and tear or maintenance;

b. Talk-A-Phone's sole warranty with respect to Services is that the Services will be performed in a workmanlike manner consistent with the level of care and skill ordinarily exercised by service providers providing similar services under similar conditions.

c. The warranties in 7(a) and 7(b) above are subject to the following limitations:

i. The Products must be used normally, in accordance with the Product's specifications and without alteration or improper repair, maintenance, handling, installation made to the Products after leaving Talk-A-Phone's facility.

ii. The warranties included herein shall expire after the period of time as set forth in the table below, beginning on the earlier of (1) sale to an end customer, or (2) six months after the Product leaves Talk-A-Phone's facility:

Emergency Phone, Call Station, Wide-Area Emergency Broadcast System, and any products containing electronic components.	Twenty-four (24) Months
Metal elements of models in the GP Series Pedestals, MT Series Towers, MTE Series Towers, MT/R Series Towers, PM Series Pedestals, SM Series Surface Mounts, Via Series Mounts, and WM Series Wall Mounts	Sixty (60) Months
Area of Refuge/Rescue Products	Sixty (60) Months
Product components covered by third party warranties	The period set forth in the third party warranty, subject to any applicable limitations or adjustments

d. Notwithstanding the foregoing:

i. if any Product or component of any Product is covered by a third party warranty, to the extent such warranty does not, by its terms, pass through to Customer, then to the extent permitted, Talk-A-Phone shall pass through and assign to Customer all warranties provided by such third party. Only such third party warranties shall apply to the Product or component thereof and Talk-A-Phone disclaims all other warranties for such Product or component thereof.

ii. this warranty does not apply to any software or documentation (including without limitation any subscription-based software or software-as-a-service) and all such software and documentation are provided “as is” without any warranty of any kind as to defects or functionality. Talk-A-Phone makes no warranties, implied or actual, regarding any of its software or documentation. Talk-A-Phone has no obligation to provide any form of cybersecurity or data protection relating to the operation of the Product.

e. **THIS WARRANTY IS IN LIEU OF AND SUPERSEDES, EXCLUDES AND EXTINGUISHES ANY OTHER WARRANTY, REPRESENTATION, ASSURANCE, GUARANTEE, OR OBLIGATION WHATSOEVER (WITHOUT LIMITATION, WHETHER IN CONTRACT OR TORT INCLUDING NEGLIGENCE OR OTHERWISE WHETHER EXPRESS OR IMPLIED OR OTHERWISE AND WHETHER ARISING AT COMMON LAW OR STATUTE, CUSTOM, USAGE, COURSE OF DEALING OR OTHERWISE) IN RELATION TO THE PRODUCTS AND SERVICES AND THE SUPPLY OF SUCH PRODUCTS AND SERVICES HEREUNDER, AND TALK-A-PHONE EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Without limiting the generality of the foregoing, the above warranties do not apply to and Talk-A-Phone shall not be responsible for any defect, non-conformity or failure resulting from: (i) any alterations, machining or finishing of the Product whether by Customer, its customers or others, after delivery by Talk-A-Phone; (ii) the integration or interaction of the Products with systems, software, equipment or components not supplied by Talk-A-Phone; (iii) installation of the Product by Customer in a particular location or any damage or defect resulting from such installation; (iv) repairs performed by someone other than Talk-A-Phone; (v) acts of nature or other acts outside of the control of Talk-A-Phone including without limitation lightning, wind, flooding, or electrical fluctuations. Talk-A-Phone makes no representation or warranty of any kind as to the security and functionality of the Products or that the Products will prevent any personal injury, death, property loss, fire, or otherwise, or that the Products will provide adequate warning or protection. If any dealer or reseller of Talk-A-Phone elects to offers its own warranty with respect to any Product, Talk-A-Phone shall not be responsible for any such warranty. Customer’s exclusive remedy under this Section is for Talk-A-Phone, at Talk-A-Phone’s discretion, to replace or repair any Product not in compliance with the warranty, provided that the warranty period does not restart for any replacement Product(s) and such replacement Product(s) shall only be warranted for the remainder of the original warranty period, if any. Talk-A-Phone shall be entitled to the return of all non-conforming Products at Customer’s expense. In no event will Talk-A-Phone be responsible for the cost of procuring substitute Product by the Customer. For all warranty claims, Customer shall comply with Talk-A-Phone’s return procedures for the return and validation of any non-conformity. To the fullest extent possible, Customer will provide Talk-A-Phone with access to any available warranty data related

to the Products and any available field-returned Products. Customer will also provide Talk-A-Phone with an opportunity to participate in any root cause analysis performed by Customer concerning the Products.

8. Default.

- a. Any one of the following events shall constitute an event of default by Customer:
- i. Failure to make payment on any invoice when due, except any portion which is subject to valid dispute;
  - ii. Failure to accept conforming Products or Services supplied hereunder;
  - iii. The return of any Products delivered without the prior written consent of Talk-A-Phone;
  - iv. The filing of a voluntary or involuntary petition in bankruptcy by or against Customer, the institution of any proceedings in insolvency or bankruptcy (including reorganization) by or against Customer, the appointment of a trustee or receiver of Customer, or an assignment for the benefit of the Customer's creditors; or
  - v. Any other breach of any of the provisions hereof.

b. In the case of an event of default by Customer, if Customer fails to cure such default within fifteen (15) days, Talk-A-Phone may, without limiting any other remedies which it may have in law or equity, by written notice to Customer, terminate the Order covered hereby, any release, or any part thereof, without any liability whatsoever.

c. No delay or omission to exercise any right or remedy available to Talk-A-Phone in the event of an event of default or otherwise shall impair any such right to Talk-A-Phone's remedies or constitute a waiver of any breach or default.

9. Indemnification.

9.1 Talk-A-Phone's Indemnification.

Subject to Customer's duty to mitigate and to the limitations on liability set forth in Section 14, Talk-A-Phone will indemnify Customer against third-party claims or demands for injury or death to persons, property damage, and any resulting direct damages, losses, costs, and expenses (including reasonable legal fees), if and to the extent caused by (1) Talk-A-Phone's delivery of Products or Services that do not conform to the warranties explicitly contained herein, (2) a decision by a court of competent jurisdiction that Talk-A-Phone's design infringes on the intellectual property rights of a third party, and (3) grossly negligent acts or omissions in Talk-A-Phone's provision of the Products or Services. This indemnity will not apply to the extent that the injury, loss, or damage results from causes for which Talk-A-Phone is entitled to indemnification under Section 9.2.

9.2 Customer's Indemnification.

Customer will indemnify and defend Talk-A-Phone against third-party claims or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by (1) any alteration or improper repair, maintenance, handling, or installation or other handling of the Products by anyone other than Talk-A-Phone; (2) the integration or interaction of the Products with systems or components not supplied by Talk-A-Phone; and (3) Property supplied by Customer or procured from a source other than Talk-A-Phone, including a directed supplier.

9.3 Procedure.

The party seeking indemnity (“Indemnitee”) will notify the other party (“Indemnitor”) promptly after it becomes aware of the basis for a claim hereunder. The parties will cooperate with each other to determine the root cause of a defect in or failure of the Products (and related systems and components) and an equitable allocation of responsibility among all responsible parties. Each party may examine and test all available Products and related systems and components that are subject to a third-party claim. Indemnitor will inform Indemnitee of settlement discussions where indemnity has been or will be sought.

10. Intellectual Property.

The Products and Services include and incorporate intellectual property and proprietary rights owned by Talk-A-Phone, LLC and/or its licensors. Customer acknowledges and agrees that Talk-A-Phone, LLC and/or its licensors retain all right, title and interest in and to all such property; that Customer’s (or any end user’s) rights to access and use the Product are subject to the terms hereof; that all Product elements will be maintained as confidential; and that the Product may not be rented, leased or lent to third parties, reverse engineered, decompiled or disassembled, or otherwise used for any purpose.

11. Force Majeure.

A party shall be temporarily excused from performance to the extent that nonperformance is caused by acts of God, labor disputes, governmental actions, orders or regulations, national emergencies, pandemics, epidemics, disease, quarantines, unavailability of raw materials, supplies or energy, or any other similar cause beyond the reasonable control of the non-performing party.

12. Confidentiality.

“*Confidential Information*” means, any information whether disclosed in writing, orally, visually, by demonstration, observation or otherwise: (a) all confidential information disclosed to one party by the other party pursuant to any non-disclosure agreements between the parties; (b) all business, operational, manufacturing, financial and technical information, including, without limitation, all specifications, formulations, designs, technology, manufacturing processes, quality control standards, data, drawings, documents, procedures, know-how or related information, customer names, pricing and costing data, marketing information, market studies, financial reporting information and other information given by one party to the other; and (c) any other information disclosed to one party by the other party which would reasonably be understood to be confidential. Confidential Information does not include any information which: (i) was already known by the recipient at the time of disclosure; (ii) is or becomes generally known to the public without breach by the recipient; (iii) is rightfully received from a third party without restriction on disclosure and not in breach of any obligation of confidentiality; or (iv) is independently developed by the receiving party without use of the information received from the disclosing party. The party which acquires (“Receiving Party”) Confidential Information of the other party (“Disclosing Party”), shall not disclose any Confidential Information of the Disclosing Party to anyone other than its or its affiliates, officers, directors, employees, contractors or authorized representatives and agents of the receiving party who have a need to know the information in connection with performing the obligations of such party hereunder and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party shall exercise the same degree of care to prevent disclosure of any Confidential Information received from the disclosing party hereunder as it takes to preserve and safeguard its own confidential information but, in any event, no less than a reasonable degree of care. In the event of any loss or improper disclosure of the proprietary information, the Receiving Party shall promptly notify the Disclosing Party. The foregoing notwithstanding, a party may disclose Confidential Information to the extent required by or permitted by applicable law, court order, subpoena, or request by federal or state banking regulators, provided the other party is given notice (if permitted) and sufficient opportunity to intervene.

13. Independent Contractors.

Talk-A-Phone and Customer are independent contractors and nothing in this Acknowledgement shall be interpreted to constitute either Talk-A-Phone or Customer as the partner, employee or agent of the other. Nor shall either Talk-A-Phone or Customer have the authority to assume or create any liability or obligation, express or implied, on behalf of, or bind in any manner, the other party.

14. Remedies; Limitations.

Except as specifically provided in the Governing Terms, the rights and remedies provided to a party hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to such party at law or in equity. **IN NO EVENT SHALL TALK-A-PHONE HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, ECONOMIC OPPORTUNITY, MARKET SHARE OR BRAND VALUE) CLAIMED BY CUSTOMER OR OTHERS IN CONNECTION WITH ANY OF THE PRODUCTS DELIVERED OR SERVICES PROVIDED TO CUSTOMER IN THIS AGREEMENT, WHETHER OR NOT TALK-A-PHONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY, IF ANY, OF TALK-A-PHONE FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT RELATED AND DAMAGES FOR INJURY TO PERSONS OR PROPERTY, WHETHER ARISING FROM TALK-A-PHONE'S BREACH OF THE ORDER, BREACH OF WARRANTY, INDEMNITY, GROSS NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, OR OTHERWISE WITH RESPECT TO THE PRODUCTS OR ANY SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE PAID FOR THE PARTICULAR PRODUCTS OR SERVICE.**

15. Successors and Assigns.

Customer shall not assign its rights or delegate its obligations hereunder without the consent of Talk-A-Phone. The rights and obligations of the parties hereunder shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

16. Waivers.

No delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of either party of any such right, power or privilege, nor any single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

17. Entire Agreement; Amendments.

The Governing Terms constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous oral and written agreements and understandings regarding the subject matter hereof. The Governing Terms shall not be supplemented or contradicted by course or dealing, usage of trade or course of performance under this or other agreements. No purchase order or other document provided by Customer shall contain any terms concerning the purchase and sale of Products or Services not contained in the Governing Terms or terms modifying any terms contained in the Governing Terms. To the extent any such terms are contained in any purchase order or other document from Customer, such terms shall not be binding on either party and shall be superseded by the Governing Terms. The Governing Terms may modified, updated or amended from time to time by Talk-A-Phone. The Governing Terms are incorporated by reference into each purchase order.

18. Severability.

If any provision of the Governing Terms is determined to be illegal or unenforceable, the remaining provisions of the Governing Terms shall not be affected thereby.

19. Governing Law.

The Governing Terms shall be governed by Delaware law.