

Terms & Conditions

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This Product Sales Agreement (this “Agreement”) is made as of 3rd September 2019, by and between Hero Design LLC, a California limited liability company (“Seller”), with an address of 2421 Peralta Street, Oakland, CA 94607, and South Bend Venues Parks & Arts (“Customer”), with an address of 1020 High Street, South Bend, IN 46601.

A. Items purchased. Seller shall sell to Customer, and Customer shall purchase from Seller: One Everbright Classic board (“Product”), which is an interactive light board with 476 color dials that rotate endlessly in either direction to produce every color of the rainbow. The Everbright Classic measures approximately 92.81 inches long, 47.11 inches high, and 5.25 inches deep (including the dials). Product includes a selection of interactive canvases and two function buttons that can switch between canvases and that allow the user to erase the board. This new edition Everbright is optimized for use in public spaces, and includes a three-year limited warranty with free shipping on all replaceable parts and lifetime technical support.

B. Custom Fabrication: Each Everbright is individually fabricated upon receipt of Customer’s deposit. Seller agrees to exercise commercially reasonable best efforts to supply Product to Customer in a timely fashion. The current lead time is approximately 12 weeks, although the actual ship date can vary based on the availability of custom components and materials.

C. Payment and Payment Terms. The purchase price for the Everbright is \$25,000 USD, plus shipping, crating, transit insurance, and any optional upgrades such as the Everbright content license with tablet. Payment shall be made via check, ACH or wire transfer to Hero Design LLC, 2421 Peralta

Street, Oakland, California 94607, as follows: Initial nonrefundable 60% deposit of \$15,000 due at time of order to secure customer's position in the production queue; balance of \$10,000 plus shipping and any applicable upgrades within 5 business days of notification that Product is complete and ready to ship. If payment is not received within 10 days of submittal of final invoice, a 5% late fee will be assessed on the remaining balance due, and interest will accrue monthly until payment is received. Once Product is complete and ready to ship, a weekly storage fee of \$50 will be due prior to shipping if Customer requests a shipping delay.

D. Product design modifications. Customer acknowledges that Seller may make changes to the Product specifications at any time for various reasons, such as to improve quality, comply with applicable law, or to adopt changes in materials or component sourcing. Buyer agrees that any such changes that do not materially change the function of the Product do not constitute a breach of or otherwise interfere with this Agreement. Unless otherwise provided in this purchase agreement, and except as otherwise provided for herein, Customer shall pay a flat change order fee of \$1,000 for any changes requested by the customer prior to the start of production, and \$5,000 for any requested changes after the start of production. For any changes in excess of 25% of the value of the original purchase agreement, a new purchase agreement may be required, and the original nonrefundable deposit will be retained in full. Customer will pay an hourly design rate of \$150 for any requested changes that require additional design or engineering time. Such charges shall be in addition to all other amounts payable under the purchase agreement, despite any maximum budget, contract price or final price identified therein. Seller may extend or modify any delivery schedule as may be required by such Changes.

E. Delivery. Seller will notify Customer when Product is complete and ready to ship.

F. Terms and Conditions. The Terms and Conditions of Sale attached hereto as Exhibits "A" and "B" are incorporated into this Agreement by reference as if fully set forth herein.

EXHIBIT A

TERMS AND CONDITIONS OF SALE

1. Terms and Conditions. These Terms and Conditions of Sale ("Terms") apply to the sale and delivery by Seller to Customer of the Product as set forth in the Agreement to which these Terms are attached. These Terms are

incorporated into the Agreement and, in combination therewith, constitute the entire agreement between the parties with respect to the sale and delivery of the Product. The Agreement is expressly limited to these Terms, and any and all terms or provisions submitted by Customer which add to, conflict with, or otherwise modify these Terms or the Agreement are expressly rejected.

2. Price. The price for the Product shall be as set forth in the Agreement (the "Price"). Unless otherwise stated, the Price does not include delivery by the appropriate shipper or courier service, additional taxes, customs, duties or insurance. Any and all current or future taxes, fees, or governmental charges applicable to the sale, delivery or shipment of the Product that Seller is required to pay or collect shall be payable by Customer either directly or if paid by Seller, paid by Customer within ten (10) days of the date of invoice from Seller of such additional costs and not subject to any off set or reduction for any reason.

3. Risk of Loss & Title. Title to the Product shall pass to Customer at such time as Seller has received payment in full for the invoiced amount for the Product, and payment of all other monies then due or owing to Seller. Risk of loss of the Product shall transfer to Customer upon acceptance of the Product by the common carrier.

4. Invoices; Payment. Customer shall be responsible for and pay, if applicable, all fees and expenses incurred by Seller in connection with the installation of Product. Product will not be shipped until payment is made in full. All amounts referenced in this Agreement are denominated and shall be paid in United States Dollars.

5. Warranty. Exhibit B hereto sets forth the terms of the limited warranty offered with the Product. No other warranty, express or implied, shall apply.

6. Consequential Damages; Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, Seller and Customer waive all claims against each other (and against each other's parent company, affiliates, contractors, subcontractors, consultants, agents and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages arising out of this Agreement (including but not limited to, loss of actual or anticipated profits, revenues or product; or loss of use), and regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability or any other legal theory. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT

LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S CUMULATIVE LIABILITY TO CUSTOMER EXCEED THE PRICE FOR THE PRODUCT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

7. Delivery. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, nor shall the carrier be deemed an agent of the Seller. A delayed delivery of any part of an order does not entitle Buyer to cancel other deliveries.

8. Intellectual Property. The Product, including software or other intellectual property components, is subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.

9. Termination and Cancellation. Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Product. The Agreement is not otherwise subject to cancellation except by mutual written agreement of the parties.

10. Inspection And Notification: Buyer shall inspect and test the Product for damage or defect immediately upon receipt, and provide Seller notice of any such damage, defect or shortage within ten (10) days of receipt. All claims for any cause whatsoever, whether based in contract, negligence or other tort, strict liability, breach of warranty or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claim not later than ten (10) days after Buyer's receipt of the Product as to which such claim is made.

11. Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or by reputable overnight courier service, or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses in the Agreement or to such addresses as a party may designate from time to time pursuant to this Section 12. All notices shall be deemed received on the date of delivery or attempted delivery, if delivered in person, or if mailed, on the date which is two (2) days after the date such notice is deposited in the mail.

12. No Waiver. No course of dealing or failure of Seller or Customer to strictly enforce any term, right or conditions of this Agreement shall be construed

as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

13. Compliance with Laws and Regulations. Customer is responsible for complying with any and all applicable federal, state and local laws, codes, ordinances, rules, regulations, and administrative orders, including, without limitation, export and import laws, rules and regulations and any and all other product safety laws, rules and regulations.

14. Modification. Notwithstanding anything contained herein, these Terms may be modified or changed only by a written amendment to the Agreement signed by Seller and Customer.

15. Use of Name. Customer agrees to obtain prior written consent of Seller before using the names Hero Design or Everbright in any advertisement, publications, or promotional materials. Customer shall not rename the product, or refer to it by another name or title. In cases when using the term “Everbright” does not seem ideal, or when the customer would prefer to use a generic description to reference the product, the terms “interactive light board” or “pixel art” may be used interchangeably, as general descriptions of the product, without gaining prior consent from the Seller.

16. Entire contract. This Contract contains the entire agreement of the parties regarding the subject matter of this Contract, and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.

17. Applicable law. This Contract shall be governed by the laws of the State of California.