

MOCAP Standard Terms & Conditions

STANDARD TERMS AND CONDITIONS OF SALE

PLEASE NOTE THAT THE FOLLOWING TERMS AND CONDITIONS OF SALE APPLY TO ALL SALES OF PRODUCT BY MOCAP, INC.

1. DEFINITIONS As used in these Terms and Conditions, "Seller" means MOCAP Incorporated; "Buyer" means the purchaser of any of the Products (as defined below) and all others liable for their purchase price, and "Products" means the Products identified on the website, or in any Quotation or Purchase Order.

2. ORDER ACCEPTANCE Sales of Products are expressly conditioned upon Buyer's assent to the Terms and Conditions as set forth herein. If the Terms and Conditions in the Buyer's order, or any other of Buyer's oral or written communications, are inconsistent with the Terms and Conditions contained herein, Seller's acknowledgment, acceptance or performance of said order shall not be construed as assent to any of the terms in Buyer's order, but shall instead constitute a counter offer, and Buyer shall be deemed to have accepted the counter offer and the Terms and Conditions set forth herein unless it notifies Seller to the contrary in writing within five (5) business days after receiving the Seller's acknowledgment. Printed material on the Buyer's forms shall not constitute a sufficient writing to modify these Terms and Conditions. No addition to or modification of the Terms and Conditions shall be binding upon Seller unless specifically agreed to by Seller in writing. In the event of any conflict between these Terms and Conditions and those submitted by Buyer, the following Terms and Conditions will prevail.

3. SHIPMENT TERMS All Products are F.O.B. point of shipment. Unless otherwise requested in writing by Buyer, Seller shall select the carrier. Risk of loss passes upon delivery to the carrier and Buyer must file any claim for damage in transit with the carrier. Buyer assumes all risks of and responsibility for loss, damage to, delay in shipment or non-delivery of the Products after their delivery to the point of destination. Seller assumes no responsibility to insure shipments unless requested to do so at Buyers' expense, by Buyer.

4. PRICES AND PAYMENT TERMS Prices stated in this website or in a Quotation are those currently in effect and are subject to change without notice. Buyer agrees to pay, and Products will be invoiced at, prices prevailing at the time of shipment. Unless otherwise expressly provided in these Standard Terms and Conditions (i) terms of payment are net cash payable at thirty (30) days from the date of shipment as evidenced by Seller's invoice date, and (ii) no discounts, anticipation or allowances are permitted.

5. ASSURANCES Shipments and deliveries of Products are subject to the approval of Seller's Credit Department, and Seller may at any time stop work in process, refuse to make shipment, or instruct the common carrier or other third person in possession of the Products to hold, store or return the Products to Seller if Buyer fails to make any payment or perform any other obligation owed to Seller when due. Buyer warrants to Seller that it is solvent, that it is able and intends to pay each of its obligations when due, and that all checks, drafts and other items tendered to Seller in payment for the Products will be honored in accordance with Seller's terms. Buyer acknowledges that Seller relies upon Buyer's representations of its solvency to induce Seller to ship Products. As such, Buyer agrees that Seller shall have the right to cancel any unfilled order and cancel any future orders without notice to Buyer in the event that Buyer becomes insolvent, is adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business.

6. CLAIMS Any claim concerning Products that could be discovered by inspection upon delivery of said Products must be reported promptly in writing to the delivering carrier and also to Seller. In the case of a claim against Seller,

inspection shall be promptly arranged with Seller and, where appropriate, representatives of the carrier. Buyer must settle any damage, loss or shortage occurring in transit with the common carrier without offset of or deduction from the purchase price of the Products affected. Buyer shall set aside, protect and hold those Products which are the subject of its claim without further processing until Seller has an opportunity to inspect Products and advise Buyer of the disposition, if any, to be made of them. In no case shall any Products be returned without first securing the written authority of Seller.

7. DELIVERY Delivery dates specified are desired and not promised dates, however, Seller will make all reasonable efforts to adhere to the delivery dates furnished by the Buyer. Seller shall not be liable for any damages, loss or expense of the Buyer for failure to comply with any shipping or delivery dates for any reason whatsoever. By consenting to or accepting delivery of the Products, Buyer waives any and all claims against Seller for damage by reason of any delay, whether subject to Seller's control or not.

8. MODIFICATION Buyer may not cancel, modify or amend any terms of a Purchase Order or hold up releases after the Products ordered are in process, except with Seller's written consent and subject to conditions then to be agreed upon, including timely receipt of all change orders and reimbursement to Seller for all costs, expenses and lost profits resulting therefrom. Seller reserves the right at any time to discontinue the manufacture of any Products, to make changes in design, or to make improvements to the Products without incurring any obligation to correct, modify, adjust or improve the Products previously manufactured and sold by Seller.

9. LIMITED WARRANTY All Products manufactured by Seller are warranted to be free from defects in material and workmanship at the time of delivery. This limited warranty extends only to Buyer, and Seller's obligation under this limited warranty is strictly limited to repairing and replacing at Seller's option any Products found to its satisfaction to be defective, provided that a written claim has been received from Buyer within 30 days after delivery thereof, and said Products are, upon request, returned to Seller's factory from which it was shipped, transportation prepaid. Neither the receipt of information from Buyer nor delivery by Seller of the Products shall in any manner imply a warranty on the part of Seller that the Products will be suitable for the purposes disclosed by Buyer nor any other obligation or liability on the part of Seller respecting the suitability of the Products. Buyer expressly agrees that Seller shall not be liable under any warranty nor for any defects or nonconformity in the Products, if Buyer's order is illegible, is in error, or specifications set forth therein are faulty or improper. This warranty does not apply where any claimed defect arose as a result of Buyer's misuse, neglect, alteration or accident with respect to the Products. Seller will not be liable for any loss of profit, loss by reason of plant shutdown, non-operation or increased expense of operation, loss or damage of any nature, and Buyer expressly waives all claims for such loss or damage. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES EXPRESS OR IMPLIED AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer will hold Seller harmless from and will be responsible for any loss, damage or injury to persons or property arising out of the use of the Products supplied by Seller except to the extent caused by Seller's negligence in product design or manufacture, and in no case will Seller be liable to purchaser for special, indirect or consequential damages. These limitations and exclusions will apply regardless of the form of action, including misrepresentation, negligence or gross negligence.

10. LIMITATION OF LIABILITY The uses to which Products are put are solely within the discretion and responsibility of the Buyer and/or end user. Buyer assumes any and all liability arising out of or in any way connected with the use of such Products and hereby agrees to indemnify Seller for such liability. Seller shall not be liable for incidental, consequential or special damages, for costs of removal or disposal, or for costs of shipment. Under no circumstance shall Seller's liability or Buyer's remedy for damages against Seller exceed the amount of the purchase price. The price stated for the Products is based upon and in consideration for limiting Seller's liability. Failure of Buyer to give timely written notice of its claim shall bar Buyer from any remedy. No claim or action

arising out of these Terms and Conditions, Buyer's order, or other document pertaining to the products may be brought by Buyer more than twelve (12) months after the date of shipment of the Products.

11. PATENTS/INDEMNITY It is not the intention of Seller to manufacture any product that is an infringement of a patented article. When parts are made by the Seller to prints, samples or specifications furnished by the Buyer, it is agreed that Buyer will defend and save harmless the Seller from any and all expenses involved in any claims for damages from infringements of patent rights by the use of, or sale of parts made by Seller.

12. CHARGE BACK LANGUAGE Buyer agrees not to "charge back" or debit sales orders without first contacting Seller's Customer Service Department to discuss whether the alleged error resulting in Buyer's claim for a price adjustment was a sole, direct and proximate result of error or negligence on the part of Seller. Buyer must prove by preponderance of the evidence that the damages allegedly sustained by Buyer are the sole, direct and proximate result of Seller's error or negligence. Buyer agrees that any disputes cannot be resolved amicably between Seller and Buyer shall be submitted to binding arbitration in St. Louis, Missouri under and subject to the laws of the State of Missouri. Under no circumstances shall a charge back occur or sales order debited without first contacting Seller relative to the above-outlined procedure. In the event Buyer debits a sales order without first following the above provisions, Seller shall be entitled to recover damages, including attorney's fees and interest, on the debited amount.

13. CONDITIONS NOT WAIVED Seller's failure to enforce or declare a default or breach with respect to any particular term or condition listed in these Terms and Conditions shall not constitute a waiver of Seller's right to enforce or be protected by any other terms or conditions or, on a subsequent occasion, that particular term or condition.

14. ALTERATION OF TERMS AND PAROL EVIDENCE The Terms and Conditions set forth herein are intended by the Buyer and Seller as a final expression and complete and exclusive statement of their agreement, and may be varied or modified only as provided for herein.

15. INVALID TERM The invalidity of any term within these Terms and Conditions shall not affect any other of its terms.

16. GOVERNING LAW These Terms and Conditions and any sale hereunder shall be governed by and construed in accordance with the internal laws and not the conflict of law rules of the State of Missouri.