



## MOCAP Standard Terms & Conditions of Sale

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

**1. DEFINITIONS.** As used in these Terms and Conditions, "Seller" means MOCAP, LLC; "Buyer" means the purchaser of any of the Products and all others liable for the purchase price. "Products" means the products identified on the Seller's website, or in any quotation, proposal or purchase order accepted by Seller.

**2. PURCHASE ORDER ACCEPTANCE.** Sales of Products are expressly conditioned upon Seller's acceptance of the purchase order and Buyer's assent to these Terms and Conditions. None of Buyer's terms and conditions, if any, contained in Buyer's purchase order, bid, or other document, shall apply or be deemed to amend these Terms and Conditions.

**3. CUSTOM MOLDED PRODUCTS/TOOLING.** The following provisions also apply to all sales of custom molded products sold under a purchase order. In the event Seller fabricates, casts or manufactures any molds, dies, forms or patterns (collectively called "Molds") necessary for the manufacture of custom molded products sold under a purchase order, Buyer shall reimburse Seller for the full cost of making such Molds and such Molds shall remain the property of Seller until Seller receives full payment from Buyer for these molds. All tooling in Seller's possession will receive normal maintenance for the production of parts unless there is no production activity for more than 12 consecutive months. In the event Seller is required to re-design, repair or replace any Molds, Buyer shall reimburse Seller for all such costs, including tooling and re-tooling costs. Buyer acknowledges that such Molds will be based on technical information and drawings provided by Buyer to Seller, and Buyer agrees not to assert any claim against Seller with respect to any such technical information or drawings Buyer may have disclosed to Seller. Seller shall comply with all specifications, drawings, quality requirements and procedures specified by Buyer, but once Buyer has agreed in writing to the design for a Mold, Buyer shall be solely responsible for the proper form, fit and function of the products manufactured using the Mold. Without limiting Buyer's obligations as stated elsewhere in these Terms and Conditions, Seller shall have no liability to Buyer for, and, Buyer shall indemnify and hold Seller harmless from, any claims including, but not limited to, claims of third parties arising out of or relating in any way to the Molds or the products manufactured using such Molds, whether based on patent, trademark, copyright, defective design, product liability, and whether arising out of contract, tort or strict liability, except to the extent such claim arises out of the gross negligence or willful misconduct of Seller or its employees. In the event Buyer provides Molds to Seller, Seller shall have no liability to Buyer for any loss or damage to such Molds during transportation from Buyer to Seller or during Seller's possession and control of such Molds, unless such loss or damage is due solely to the gross negligence or willful misconduct of Seller or its employees. Buyer shall be solely responsible for obtaining and paying for any insurance on such Molds. To the fullest extent permitted by applicable law, Seller shall retain a security interest, which may be reflected in a UCC-1 Financing Statement, in the Molds (whether created by Seller or provided by Buyer) in an amount equal to the total of (i) any unpaid amount due Seller hereunder for cost of fabrication, casting, manufacturing, repairing or re-tooling of such Molds, plus (ii) any unpaid amount due Seller for any products manufactured by Seller using the Molds. Buyer shall, at Buyer's sole cost and expense, promptly arrange for removal of the Molds from Seller's facility after the last production run using such Molds, provided Buyer has fully paid for such Molds and re-tooling costs, if any. In the event Buyer fails to do so within 18 months after the last production run using such Molds, Seller shall have the right to dispose of such Molds without further notice to Buyer and Seller shall have no liability to Buyer for the Molds or the disposal thereof.

**4. SHIPMENT TERMS.** All Products are shipped F.O.B. Seller's premises for North America or FCA - Free Carrier (meaning that Products are placed at the disposal of the Buyer at the Seller's premises, cleared for export and loaded with Buyer's selected carrier) for shipments outside North America. Unless otherwise requested in writing by Buyer, Seller shall select the carrier. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of purchase order.



**5. TITLE AND RISK OF LOSS.** Title and risk of loss pass 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 by Buyer, at Buyers' expense. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Missouri Uniform Commercial Code.

**6. PRICES.** Prices stated on this website or in a quotation are those currently in effect and are subject to change without notice. Except as otherwise agreed in writing between Buyer and Seller, all prices are given by the Seller on an F.O.B. or ex Works basis, and where the Seller agrees to deliver the Products otherwise than at the Seller's premises, the Buyer shall be liable to pay the charges for transport, packaging and insurance. All prices are based on U.S. Dollars, and exclude shipping charges and sales, use, excise or similar taxes. Buyer shall pay, or reimburse Seller for, the gross amount of all shipping charges, all import and export charges, license fees, duties and similar charges, and any present or future taxes (including any applicable local taxes), fees (including those covering preparation of consular documents and consular fees), deductions or withholdings (other than income taxes) on any amounts payable to Seller or applicable to the sale or furnishing of Products. All drawback of duties paid on items entering into manufacture of the Product hereunder shall accrue to Seller, and Buyer will furnish Seller, wherever possible all documents necessary to obtain payment of such drawbacks and expenses and will cooperate with Seller in obtaining such payment. Seller may change prices due to changes in customs duties, taxes, vendor prices, foreign exchange fluctuations, currency regulations, or other. If Seller is prevented from charging any price in effect by any governmental law, order, regulation or ruling, then Seller may cancel a purchase order by giving Buyer thirty (30) days written notice thereof.

**7. PAYMENT TERMS.** 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. Buyer is not entitled to withhold from, set off against or otherwise reduce any payments due to the Seller unless expressly agreed in writing in advance by Seller.

**8. 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 or if Seller reasonably determines that Buyer's credit worthiness is unsatisfactory or that the Buyer will not be able to pay the amounts due and payable. Buyer warrants to Seller that 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.

**9. 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.

Buyer shall inspect the Products within 30 days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Products" means only the following: (i) Product shipped is different than identified in the purchase order; or (ii) Product's label or packaging incorrectly identifies its contents.

If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) repair such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Seller's facility. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products. Buyer acknowledges and agrees that the remedies set forth in this Section 9 are Buyer's exclusive remedies for the delivery of Nonconforming Products. Except as provided in this Section 9, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased to Seller.

**10. DELIVERY.** Delivery dates specified are desired estimates only, and not promised dates. Seller will make reasonable efforts to adhere to the delivery dates furnished by the Buyer; provided Buyer provides Seller with reasonable written notice of its desired delivery dates. 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.

**11. MODIFICATION AND CANCELLATION.** Buyer may not 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. Purchase orders are not subject to cancellation, except upon (i) written approval of the Seller and (ii) the payment of a fair and equitable charge paid by the Buyer. In the case of any goods manufactured by the Seller, this will be based upon Seller's actual costs to the date cancellation notice is received and approved by Seller, including all charges made by suppliers or subcontractors of the Seller, any commissions on such sales paid by Seller prior to receipt and acceptance of the cancellation notice.

**12. 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, technical information or instructions 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. 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 indemnify, defend and 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 and only to the extent such loss or damage was caused as a direct result of Seller's negligence in product design or manufacture, and in no case will Seller be liable to purchaser for special, indirect, consequential or exemplary damages. These limitations and exclusions will apply regardless of the form of action is based on contract or tort.

**13. 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 or exemplary damages, loss of profit, loss by reason of plant shutdown, for costs of removal or disposal, costs of any substitute for products, non-operation or increase expense of operation or for costs of shipment and Buyer expressly waives all claims for such loss or damage. 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.

**14. INTELLECTUAL PROPERTY; INDEMNITY.** If the Products are to be manufactured or any process is to be applied to the Products by the Seller in accordance with a specification, technical information or drawings submitted by the Buyer, the Buyer warrants that any design, drawings, specifications, information or instructions furnished or given by it shall not be such as will cause the Seller to infringe any registered designs or trade mark or trade name or copyright or letters patent in the performance of the fulfillment of the purchase order and shall indemnify, defend and hold harmless the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Purchaser's specification. Any patent and design rights held by the Seller shall remain the sole and absolute property of the Seller and such designs, drawings, equipment, process or any part thereof shall not be reproduced or disclosed or allowed to be reproduced or disclosed by the Buyer, without the advance express written consent of the Seller.

**15. FOREIGN SHIPMENTS.** Buyer agrees that all foreign shipments shall be shipped in compliance with the Arms Export Control Act ("AECA") and the regulations thereunder ("ITAR") as well as the Export Administration Act ("EAA") and the regulations thereunder ("EAR"), Section 5 (b)(1) of the Trading with the Enemy Act, and the Foreign Assets Control, Transaction control, and Cuban Assets Control regulations, the International Economic Emergency Powers Act, the Securities and Exchange Act of 1934, the Foreign Corrupt Practices Act, Internal Security Act of 1950, and National Security Act of 1947. Buyer agrees to indemnify and hold the Seller harmless from and against all claims, charges, actions, and proceedings brought against Seller by any lawful government authority or by any person on account of any alleged violation of the U.S. export or import laws by Buyer.

**16. COMPLIANCE WITH LAWS.** Buyer shall be responsible for processing all registrations and importation permits to import the Products and shall comply, prior to importing the Products, with all applicable laws and other requirements including but not limited to those regarding labeling, safety and usage, handling and disposal of hazardous materials, import and export of materials, and with all other applicable laws and regulations. Buyer represents and agrees that its activities in connection with the website, any Quotation or any purchase order comply with the U.S. Foreign Corrupt Practices Act and any other similar acts applicable to Buyer. Buyer shall not pay, promise to pay, or authorize the payment of any money or anything of value, directly or indirectly to any person (whether a government official or private individual) for the purpose of illegally or improperly inducing any official or political party or official of that political party in obtaining or retaining business, or taking any other action favorable to Buyer or its business.



**17. CHARGE BACK LANGUAGE.** Buyer agrees not to “charge back” or debit payments of purchase orders, without first contacting Seller 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, without regard to conflict of law principles. Under no circumstances shall a charge back or debit occur on a payment of a purchase order without first contacting Seller relative to the above-outlined procedure. In the event Buyer debits payment of a purchase order without first following the above provisions, Seller shall be entitled to recover damages, including attorney’s fees and interest, on the debited amount.

**18. FORCE MAJEURE.** Neither Seller nor Buyer shall be liable for loss or damage, resulting from any delay or failure in performing any of its obligations arising from any cause beyond its reasonable control, which could not have been foreseen or avoided in whole or in part by such party and which affects either Buyer, the Seller, or the production of the Products. Such cause shall include: (a) governmental action or lack of action, governmental restriction or control; (b) plant shutdowns or reduction in production in respect of one or more production plants of the Seller caused by mechanical or other failure; (c) tidal wave, earthquake, storm, adverse weather conditions, national emergency, typhoon, flood, fire, explosion, epidemic, acts of God, accident; (d) total or partial unavoidable breakdown of delivery facilities; or (e) shortage of feedstock, fuel and utilities and the suspension of power supply affecting one or more production plants of the Seller. Seller shall have no obligation to source Products from any other of its or its affiliates manufacturing locations or procure Products from any third parties in order to comply with any obligations hereunder.

**19. 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.

**20. RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms and Conditions, or any Quotation or purchase order, shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**21. NO THIRD-PARTY BENEFICIARIES.** These Terms and Conditions are for the sole benefit of the Buyer and Seller and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

**22. ASSIGNMENT.** Buyer may not transfer or assign its obligations under these Terms and Conditions or any purchase order, whether by sale, merger, acquisition, or by operation of law, without the prior express written consent of Seller. Any purported transfer or assignment in violation hereof shall be void and of no force and effect.

**23. ENTIRE AGREEMENT; ALTERATION OF TERMS.** These Terms and Conditions contain the entire agreement and understanding of the parties related to its subject matter and supersede all prior proposals, understandings, agreements, correspondence, arrangements and contemporaneous oral agreements relating to the subject matter hereof. None of Buyer’s terms and conditions, if any, contained in Buyer’s purchase order, bid, or other document, shall apply or be deemed to amend these Terms and Conditions. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement these Terms and Conditions will be binding or be used to qualify, explain or supplement any of these terms and conditions unless the party to be bound has agreed in writing, and no modification shall be effected by the acknowledgment or acceptance of sale or shipping instruction forms containing terms or



conditions at variance with or in addition to these Terms and Conditions. No addition to or modification of these Terms and Conditions shall be binding upon Seller, unless specifically agreed to in advance 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.

**24. INVALID TERM.** The invalidity of any term within these Terms and Conditions shall not affect any other of its terms, each of which shall be enforced to the full extent permitted by the governing law.

**25. SURVIVAL.** Provisions of these Terms and Conditions, which by their nature should apply beyond their terms will remain in force after any termination or expiration of a purchase order or these Terms and Conditions including, but not limited to, the following provisions: Compliance with Laws, Governing Law, Limited Warranty, Limitation of Liability, Intellectual Property; Indemnity, and Survival.

**26. 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. The parties hereby agree to exclude application of the United Nations Convention on the International Sale of Goods in connection with the sale of any goods or Products.