

TERMS & CONDITIONS

MOCAP LIMITED

CONDITIONS OF SALE AND/OR CONTRACT

1. General

These Conditions shall form the basis of the contract between MOCAP Limited ("the Seller") and the other party referred to overleaf ("the Purchaser") ("the Contract"). Notwithstanding anything to the contrary in the Purchaser's standard conditions of purchase, these Conditions shall apply except so far as expressly agreed in writing by the Seller. No servant or agent of the Seller has power to vary these or to make representations or promises about the condition of the goods the subject of the Contract ("the goods") their fitness for any purpose or any other matter whatsoever.

2. Quotations and Orders

Unless otherwise expressly stated in writing, all quotations and estimates by the Seller are invitations to treat. The Purchaser's order is an offer and will become binding upon the Seller posting or delivering its confirmation of the order. A confirmed order may only be cancelled or varied with the Seller's written consent; the giving of the Seller's consent shall not in any way prejudice the Seller's right to recover from the Purchaser full compensation for any loss or expense arising from such cancellation or variation.

3. Cost Variation

All quotations and estimates issued by the Seller are, unless otherwise stated, based on current in store costs. All prices quoted are valid for 30 days only or until earlier placing of an order by the Purchaser, after which time they may be altered by the Seller without giving notice to the Purchaser. The Seller reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the goods to reflect any increase in cost to the Seller which is due to any factor beyond the reasonable control of the Seller, any changes requested by the Purchaser, or any delay caused by any instructions of the Purchaser, or failure of the Purchaser to give the Seller adequate information or instructions.

4. Documentation

The catalogues, advertisements and other statements made by the Seller are intended for information only and shall not form part of any quotation or contract unless expressly included in writing.

All moulds, mould tooling, drawings and designs shall be the sole property of the Seller.

The Purchaser shall keep the Seller indemnified against all costs, proceedings, claims and demands whatsoever to which the Seller may become liable as a result of work done in accordance with the Purchaser's specifications and which involves infringement of any letters patent or registered design or otherwise the legally enforceable rights of a third party.

5. Delivery

(a) Dates of delivery are estimates only and the Seller shall not be liable in any respect whatsoever for the consequences of a delay howsoever caused.

(b) Where the Seller is to deliver, delivery shall be as near as possible to the Purchaser's premises (or such other place as shall be agreed) as a safe hard road permits. The Purchaser shall provide at its own expense the labour for unloading and stacking; such labour to be available during normal working hours.

Damage to goods due to inadequate site access or careless planning shall be at the Purchaser's risk. The Purchaser hereby agrees to indemnify the Seller against all costs and expenses incurred due to any damage incurred to any goods, plant or machinery owned by or at the Seller's risk arising from inadequate site access and/or the Purchaser's careless or inadequate planning of delivery, unloading and/or storage of the goods.

(c) Where the goods are not delivered by the Seller, but by an independent carrier, delivery to the carrier shall be delivery by the Seller to the Purchaser. The Purchaser shall have a duty to acquaint itself with the carrier's conditions of transport and delivery and will meet the said conditions.

6. Claims

(a) In the case of any claim based on any defect in the quality or condition of the goods or their failure to correspond with specification, notification shall (whether or not delivery is refused) be given by the Purchaser to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. Where an independent carrier has made/proffered delivery the Purchaser shall also notify the carrier of any claim in accordance with the carrier's conditions of delivery, or if none in writing within 7 days of the date of delivery.

(b) If delivery is not refused and the Purchaser has not given notice in accordance with paragraph 6(a), the Purchaser shall not be entitled to reject the goods and the Seller shall have no liability for any such defect or failure, and the Purchaser shall be bound to pay the contractual price for the goods.

(c) Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the Seller in accordance with paragraph 6(a), the Seller shall be entitled either (at its sole discretion) to replace the goods (or part in question) free of charge or refund to the Purchaser the price (or a proportionate part of the price) of the goods, but the Seller shall have no further liability to the Purchaser.

7. Except as may be the inalienable statutory right of the Purchaser or except as may be specifically provided herein or otherwise agreed in writing by the Seller no warranties are to be agreed or to be implied in the contract between Purchaser and Seller and without prejudice to the generality of this exclusion no warranty is

to be given or to be implied as to the life or wear of the goods or as to their suitability for any particular purpose or for their use under any specific condition without such specific provision or agreement in writing by the Seller.

8. The Seller shall not be liable to the Purchaser or be deemed to be in breach of contract by reason of any delay in performing, or failure to perform, any of its obligations, if the delay or failure was due to any cause beyond the Seller's reasonable control.

9. Title to and Risk in Goods

(a) On delivery of goods to the Purchaser the risk therein passes to the Purchaser. Notwithstanding delivery and the passing of risk, the title and property to the goods shall remain with the Seller until the Seller receives in cash or cleared funds payment in full of the price of the goods.

(b) Until such time as the property in the goods passes to the Purchaser, the Purchaser shall hold the goods as the Seller's fiduciary agent and bailee, and shall keep the goods separate from those of the Seller and third parties, and properly stored, protected and insured, and identified as the Seller's property. The Purchaser shall be entitled to resell or use the goods in the ordinary course of its business, and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties.

(c) Until property in the goods passes to the Purchaser, the Seller shall be entitled at any time to require the Purchaser to deliver up the goods to the Seller (or as it directs) and if the Purchaser fails to do so forthwith, to enter upon any premises where the goods are stored and repossess the goods.

10. Terms of Payment

(a) The Seller shall be entitled to invoice the Purchaser on or at any time after delivery or the tendering of delivery of the goods. The Purchaser shall pay the price of the goods within 30 days of the end of the month in which the Seller's invoice is dated. The price for the goods is exclusive of any applicable value added tax or other sales tax, which the Purchaser shall be additionally liable to pay to the Seller at the time of paying the price of the goods.

(b) The Seller reserves the right to charge interest on overdue accounts (both before as well as after any judgment) at the rate of 2% above base lending rate of the Seller's Bankers for the time being in force. The Seller shall without prejudice to any other remedy available to it, be entitled in the event of a default by the Purchaser in making payment at due time to suspend or cancel any further deliveries.

11. Termination

If the Purchaser shall make default in or commit a breach of these Conditions or any other of its obligations to the Seller or if distress or execution be levied upon the Purchaser's property or assets or if the Purchaser shall make any arrangement or composition with creditors or (being an individual) commits an act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented against him or (if the Purchaser is a limited company) any resolution or petition to wind up such company's business (except for amalgamation and reconstruction) shall be passed or presented or if a receiver or an administrative

receiver or an administrator is appointed, or the Purchaser ceases, or threatens to cease to carry on business, or the Seller reasonably apprehends that any of the foregoing is about to occur and notifies the Purchaser accordingly, the Seller shall have the right forthwith to determine any contract then subsisting and upon written notice of such determination being posted to the Purchaser's last known address or registered office any subsisting contract shall be deemed to be determined without prejudice to any claim or right the Seller may otherwise have or exercise.

12. Export Terms

(a) In this paragraph "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any term or expression which is defined or given a particular meaning in the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

(b) Where the goods are supplied for export from the United Kingdom, the provisions of this paragraph 12 shall (subject to any special terms agreed in writing between the Purchaser and the Seller) apply notwithstanding any other provisions of these Conditions.

(c) The Purchaser shall be responsible for complying with any legislation or regulation governing the importation of the goods into the country of destination and for the payment of any duties thereon.

(d) Unless otherwise agreed in writing between the Purchaser and the Seller, the goods shall be delivered ex-works.

(e) The Purchaser shall be responsible for arranging for testing and inspection of the goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13. Waiver

No waiver by the Seller of any breach of the contract between the Seller and the Purchaser, by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

14. Applicable Law

This Contract shall be construed in accordance with the laws of England.