



## MOBILE MARK, INC. TERMS AND CONDITIONS

**Exclusive Terms of Sale.** Seller has sold the goods referenced in this invoice ("Goods") to Buyer subject in all respects to these Terms and Conditions. This invoice ("Invoice") arises in connection with the purchase order to buy any Goods referenced in this Invoice ("Order"), these Terms and Conditions (which may also be attached to, contained in or otherwise referenced in Seller's sales quotation, Order acknowledgement or other correspondence from Seller) will constitute the entire agreement by and between Buyer and Seller, and any additional or contrary provisions attached to, contained in or otherwise referenced in the Order or any other of Buyer's forms or other correspondence will not be part of the agreement between Buyer and Seller. These Terms and Conditions may be modified only by a writing signed by Seller. These Terms and Conditions are for the benefit of Seller and Buyer and not for the benefit of any third party.

**Cancellation of Orders.** Prior to shipment by Seller, (i) Orders may be cancelled or deliveries deferred only upon the condition that Buyer assumes immediate liability, and makes payment to Seller, for all work completed to date at the unit sales price, plus work in process on the basis of the percentage of completion thereof times the unit sales price, plus raw material, tooling, engineering and other cancellation charges incurred on the basis of cost to Seller, plus handling and overhead charges; and (ii) all cancellation charges shall be determined by Seller at the time of cancellation or deferment and notice thereof shall be provided to Buyer. After shipment by Seller, Orders are non-cancellable and nonreturnable unless the Goods are nonconforming.

**Terms of Payment.** Seller will invoice Buyer for Goods upon shipment, and Buyer will pay the invoice within thirty (30) days after the date of the invoice. Invoiced amounts not paid in accordance with these terms will bear interest at a rate equal to the lesser of (i) one and one-half percent (1.50%) per month; or (ii) the highest rate allowed under applicable law. In addition, Buyer shall pay Seller all reasonable costs and expenses incurred by Seller and its agents in connection with all attempts to collect from Buyer amounts not paid in accordance with these payment terms, including, without limitation, reasonable attorneys' fees, collection fees, interest and court and arbitration costs. Further, if Buyer fails to pay any invoiced amount in accordance with these payment terms, Seller may, in its sole and absolute discretion and without prejudice to any of its other remedies, suspend further production and deliveries to Buyer, and, if at any time Seller determines in its sole and absolute discretion that Buyer's financial ability is or becomes inadequate to support shipment of Goods on an open account basis, Seller reserves the right to require full cash payment or satisfactory security before continuing production or making deliveries.

**Taxes.** Buyer shall pay any tax, import or export duty or other governmental charge upon the production, sale, shipment or use of the Goods (collectively, "Taxes"), including any such Taxes that Seller is required to remit or to collect from Buyer, unless Buyer furnishes Seller with an exemption certificate acceptable to the applicable taxing authority. Buyer shall pay Seller all reasonable costs and expenses incurred by Seller and its agents in connection with all attempts to collect from Buyer any such Taxes, including, without limitation, reasonable attorneys' fees, collection fees, interest and court and arbitration costs.



**Property and Intellectual Property Rights.** Any and all tools, dies, patterns, molds and things used by Seller in manufacturing the Goods are the sole and exclusive property of Seller. In addition, Buyer will obtain no right whatsoever in any copyright, patent, trademark, trade secret, mask work or other intellectual property right pertaining to the Goods.

**Freight.** Terms are Ex Works (Incoterms 2010) Seller's plant. Title to Goods passes to Buyer, and Seller's liability with respect to the Goods ceases, upon making delivery of the Goods to the carrier at Seller's plant. Seller will ship Goods in a reasonable method in suitable packages, the nature of which will be determined by Seller, except where otherwise expressly agreed upon in writing by Buyer. The full cost of shipping the Goods will be added to the invoice and paid by Buyer or Goods will be shipped freight collect.

**Delivery.** Acceptance by Seller of an Order with a requested or required delivery date, or any estimate by Seller of the date delivery of Goods will be made, will be made by Seller in good faith, but does not represent a guarantee that delivery will occur on that requested, required or estimated delivery date. Accordingly, under no circumstances will Seller be liable for any damages, direct or consequential, arising out of any delayed delivery of Goods. Seller may make deliveries in installments, and each installment may be separately invoiced and shall be paid by Buyer as billed without regard to subsequent deliveries. Any delay in delivery of any installment or failure to ship any installment does not relieve Buyer of its obligation to accept remaining installments, unless otherwise expressly agreed to in writing by Seller.

**Excuse of Performance.** Seller will not be liable to Buyer for any delay or failure to perform its obligations, in whole or in part, due, directly or indirectly, to any circumstance beyond Seller's control, including, without limitation, war, terrorism, riot, flood, act of God, shortage of transportation, blockade, embargo, court order, governmental action, strike or other labor trouble, fire, damage to or destruction in whole or in part of Goods or Seller's plant or inability to obtain material, equipment or transportation (any such circumstance, a "Force Majeure Event"). If shipment of any Order is delayed by more than six (6) months because of a Force Majeure Event, either Buyer or Seller may cancel that shipment and the balance, if any, of the Order, and, in the event of any such cancellation, Buyer shall reimburse Seller for Seller's costs incurred to date in accordance with Section 2 hereof and, upon such reimbursement by Buyer to Seller, neither party will be liable to the other for any loss or damage, direct or consequential, from such cancellation. If for any reason (due to Force Majeure or otherwise), Seller is unable to supply the entire demand for the Goods in any Order for any reason, Seller reserves the right to allocate its available supply among any or all orders taken, including, without limitation, orders taken from different customers of Seller, all on such basis as Seller may deem fair and practical, without liability to Buyer resulting therefrom.

**Acceptance of Goods.** Buyer shall inspect the Goods immediately upon receipt and shall give written notice to Seller of any claim that the Goods supplied are nonconforming within thirty (30) days of Buyer's receipt of such Goods. Seller will thereupon be afforded a prompt and reasonable opportunity to inspect the Goods at a location specified by Seller. If Buyer fails to give such notice within thirty (30) days of receipt or fails to provide such prompt and reasonable opportunity to inspect, the Goods will be deemed to be accepted and Buyer will be deemed to waive any right Buyer may have to revoke or refuse acceptance of the Goods or refuse to make payment therefor. Buyer must receive Seller's written authorization before returning any Goods. If Goods are returned without such written authorization, they will be refused by Seller. If Seller determines in its reasonable discretion that Goods do not comply with the Goods Warranty (as defined below) or the Order quantity, Buyer's exclusive remedy against Seller, if for (a) shortage, will be to require Seller to make up the shortage within ninety (90) days of Seller's receipt of the notice; or (b) Goods that fail to comply with the Goods Warranty, will be to return the Goods to Seller, at Seller's expense, by reasonable method of shipment, within thirty (30) days after receiving Seller's written authorization, whereupon Seller at its election shall repair or replace the same or refund the purchase price thereof. The aforesaid obligation of Seller to repair or replace Goods that fail to comply with the Goods



Warranty, refund the purchase price or to make up any shortage within ninety (90) days will be (i) the limit of Seller's liability; and (ii) Buyer's sole and exclusive remedy for Goods that fail to comply with the Goods Warranty or any shortage.

**Goods Warranty.** Seller warrants to Buyer that for a period of three (3) years from the date of shipment the Goods will be free from defects of material and workmanship and will be in accordance with Seller's specifications or, if applicable, to any specifications provided to and accepted by Seller (the "Goods Warranty"). Seller will hold Buyer harmless against any rightful claim of any third person that the Goods infringe any U.S. patent; provided, however, if (i) Goods are manufactured pursuant to specifications provided to Seller; or (ii) to the extent that infringement arises where Goods are used or combined by Buyer or a third party with other things not furnished hereunder, then Seller will have no such indemnification obligation, and Buyer will hold Seller harmless against any such infringement claim; provided further that the party seeking to be held harmless notifies the other party and gives it the right to defend such claim. (iii) This Goods Warranty shall not apply to damage to goods that results from power surges, fire, unusual mechanical, physical, or electrical stress, or any unauthorized disassembly, repair, or modification, severe weather conditions or acts of nature, including but not limited to lightning or floods. IT IS EXPRESSLY AGREED THAT THE FOREGOING WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES AND LIABILITIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN ADDITION, IN NO EVENT WILL THE LIABILITY OF SELLER UNDER ANY ORDER EXCEED THE PURCHASE PRICE OF THE GOODS PURCHASED ON THAT ORDER, AND FURTHERMORE, UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR CONTINGENT DAMAGE OR EXPENSE ARISING DIRECTLY OR INDIRECTLY FROM ANY NONCONFORMING GOODS OR FROM THE USE THEREOF (INCLUDING BUT NOT LIMITED TO LOST PROFITS), NOR IS ANY OTHER PERSON AUTHORIZED TO ASSUME FOR SELLER ANY SUCH LIABILITY.

**Confidentiality.** Buyer will keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Seller that is marked "confidential" or by its nature ought to be considered confidential, including, but not limited to, quotes, business plans, technological techniques, prints, inventions and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if it: (i) is or becomes readily ascertainable by the public by proper means without breach of any obligation of confidentiality owed to Seller; (ii) is disclosed with the prior written approval of Seller; (iii) becomes known to Buyer from a source other than Seller without a breach of any obligation of confidentiality owed to Seller; or (iv) is required to be disclosed by Buyer pursuant to operation of law or authority of any regulatory agency.

**Firmware License.** Buyer may use such firmware as is installed on the Goods solely for Buyer's own use and operation of the associated Goods. Buyer may not (i) copy any firmware; (ii) decompile, disassemble, decrypt, or reverse engineer the firmware or attempt to derive the source code for any part of the firmware; (iii) encumber any right in the firmware in favor of a third party, whether by agreement, operation of law, or otherwise; (iv) remove from the firmware or associated documentation from any product identification or proprietary rights notices; (v) sell, lease, lend or sublicense the firmware or the documentation to any third party; (vi) use the firmware for timesharing or service bureau purposes; (vii) modify or create derivative works of the firmware (except that Buyer's code written to published APIs for the firmware will not be deemed a derivative work); or (viii) publish or disclose to any third party the results of any benchmark tests or other evaluation run on the firmware without the prior written consent of Seller.

**No Implied Waiver.** The failure of either party at any time to require performance by the other party of any provision of these Terms and Conditions will in no way affect the right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision of these Terms and Conditions constitute a waiver of any succeeding breach of the same or any other provision.



**Assignment and Delegations.** Buyer will not assign any rights or delegate any obligations under any Order without the prior written consent of Seller. Any such consent will not release Buyer from any of its obligations under any Order. Seller may subcontract its obligations under any Order.

**Governing Law; Notices; Arbitration.** These Terms and Conditions will be governed by the Uniform Commercial Code of the State of Illinois without regard to choice of law rules, or to the Convention on Contracts for the International Sale of Goods. Any notice required to be sent under these Terms and Conditions will be sufficiently given if sent by U.S. Mail addressed to the party at the place of business referred to on the front side of the Order. Any dispute shall be resolved exclusively, finally and conclusively by binding arbitration conducted in Cook County, Illinois, in accordance with the commercial rules of the American Arbitration Association. Any action arising under any agreement of the parties must be commenced within one year after such cause of action accrues.