

## MOUNTZ, INC.

### STANDARD TERMS AND CONDITIONS OF SALE

1. **Controlling Document.** The acceptance of an order from the purchaser ("Purchaser") is expressly made conditional on Purchaser's assent to the terms and conditions set forth herein, and Mountz, Inc. ("Seller") agrees to furnish the goods covered thereby (the "Goods") only upon these terms and conditions. This document constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements. No term or condition of Purchaser's order inconsistent with the terms and conditions hereof, and no term, condition, statement or representation not contained herein, will be binding on Seller as a warranty or otherwise. Unless Purchaser notifies Seller in writing to the contrary promptly after receipt hereof, Purchaser will be deemed to have accepted the terms and conditions hereof and the sale and shipment by Seller of the Goods will be conclusively deemed to be subject to the terms and conditions hereof. No waiver, alteration, or modification of any of the provisions hereof will be binding on Seller unless made in writing signed by an authorized officer of Seller.

2. **Prices and Taxes.** Prices shown are for delivery of Goods F.O.B. Seller's facility. Any manufacturer's, sales, use, or excise tax; custom, inspection, certification, or testing fee; or any other tax, fee, or charge of any nature whatsoever imposed by governmental authority, on or measured by the transaction between Seller and Purchaser will be paid by Purchaser in addition to the prices quoted or invoiced. All delinquent payments will be subject to a finance charge of one and one-half percent (1½%) per month or, if less, the maximum amount permitted by law. Purchaser agrees to pay all costs of collection, including attorney fees, whether or not a lawsuit is initiated.

3. **Terms and Method of Payment.**

(a) If Seller extends credit to Purchaser, the terms of payment will be net thirty (30) days from date of invoice. The amount of credit extended by Seller may be changed or withdrawn by Seller at any time. Seller currently accepts payment by major credit card (VISA, MasterCard and American Express), but reserves the right to change its credit card policies. Mountz will charge a 1% fee on credit card orders over \$25,000.00. If Seller does not extend credit to Purchaser, Seller may in its discretion require payment, by such method as Seller may specify, at time of placement of the order or prior to shipment of the Goods.

(b) Each shipment of Goods will be considered a separate and independent transaction and payment therefor will be made accordingly. If shipment is delayed by Purchaser, payment will become due on the date when Seller is prepared to make shipment. Goods held by Seller for Purchaser because of Purchaser's delay will be held at Purchaser's risk and expense.

(c) If in the judgment of Seller, the financial condition of Purchaser at any time does not justify continuance of production or shipment upon the terms of payment specified, Seller may require full or partial payment in advance. Furthermore, Seller may refuse to ship Goods if Purchaser has an outstanding overdue balance with Seller.

4. **Security Interest.** Seller will retain and is hereby granted a security interest in the Goods (and any replacements therefor) delivered hereunder and in the proceeds from the sale or disposition thereof, until Purchaser has made payment in full for such Goods. Purchaser authorizes Seller to file all documents (such as UCC-1 Financing Statements) necessary to perfect such security interest. Without limitation of any other rights afforded Seller under applicable law or hereunder, Seller has the right, upon demand, to repossess Goods delivered hereunder if Purchaser fails to make timely payment.

5. **Delivery and Delay.** Delivery of Goods to a carrier at Seller's plant or other loading point will constitute delivery to Purchaser. All risks of loss and/or damage in transit are borne by Purchaser. Seller will drop ship Goods only on a case-by-case basis, in Seller's discretion. Seller reserves the right to make partial deliveries, and unless otherwise specifically agreed, all such partial deliveries will be separately invoiced, and such invoices will be paid by Purchaser when due, without regard to the timing or schedule of subsequent deliveries. Delay in delivery of any scheduled shipment will not relieve Purchaser of its obligations to accept remaining deliveries. Seller will not be liable for any loss or damage as a result of any delay due to any cause beyond Seller's direct reasonable control, including, without limitation, acts of God, acts of Purchaser, fire, theft, accidents, slowdowns, strikes, riots, embargoes, governmental acts, regulations or requests, delays of common carriers, inability to obtain necessary labor, materials or manufacturing facilities, or other similar causes. In case of any such delay, delivery dates will be extended by the amount of the delay. In addition, Seller shall have the right, for any reason, to delay scheduled delivery dates upon thirty (30) days prior notice to Purchaser and to cancel any order upon ninety (90) days prior notice. In no event will Seller's liability for any other delay or non-delivery caused by any reason exceed the sales price to Purchaser of the delayed or non-delivered Goods.

6. **Inspection.** Purchaser will examine all Goods promptly upon receipt thereof. Within thirty (30) days of such receipt, Purchaser will notify Seller in writing of all claimed shortages, defects, and other errors in delivery and, if a rejection is intended, the reasons therefor. Failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Purchaser and the Goods will be deemed accepted as of the date of shipment.

7. **Limited Warranty.** Seller warrants that the Goods will be free of defects in materials or workmanship, under normal use and service, for a period of one (1) year from date of shipment from Seller's facility. For the FG & FGA screwdrivers and FGC wrenches, the seller warrants that the Goods will be free of defects in materials or workmanship, under normal use and service, for a period of two (2) year from date of shipment from Seller's facility. For the EPT-Series Li-ion Battery (25.2V 3.0A), the seller warrants that the Goods will be free of defects in materials or workmanship, under normal use and service, for a period of six (6) months from date of shipment from Seller's facility. The liability of Seller under the foregoing warranty is limited, at Seller's option, solely to repair or replacement with equivalent Goods, or an appropriate credit adjustment not to exceed the sales price to Purchaser. This warranty will apply only if (a) Purchaser notifies Seller in writing, within the warranty period, promptly upon discovery of defects, with a detailed description of such defects and the affected Goods, (b) Purchaser has obtained a Return Materials

Authorization ("RMA") from Seller which RMA Seller agrees to issue to Purchaser promptly after Purchaser provides Seller's Customer Service Department with the original purchase order number and invoice number and date, (c) the defective Goods are returned to Seller within twenty days after the issuance of the RMA, with the RMA shown on each shipping carton, transportation and other applicable charges prepaid by Purchaser, and (d) Seller's examination of such Goods discloses to its reasonable satisfaction that defects were not caused by negligence, misuse, improper installation, improper maintenance, accident or unauthorized repair or alteration. The original warranty period for any Goods which have been repaired or replaced by Seller will not thereby be extended. Unless otherwise indicated in the RMA, defective products should be shipped to Seller at the following address: Returns Processing Center, Mountz, Inc., 19051 Underwood Road, Foley, AL 36535.

THE FOREGOING WARRANTY IS PROVIDED EXPRESSLY IN LIEU OF, AND SELLER HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY OR ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART RELATING TO ANY ALLEGEDLY DEFECTIVE PRODUCT, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER LIABILITY. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG A STATUTORY OR IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. This limited warranty gives you specific legal rights and you may have other rights that vary from jurisdiction to jurisdiction.

8. **Limitations of Liability.** The remedies set forth in Sections 6 and 7 above constitute Purchaser's sole and exclusive remedies for nonconforming or defective Goods. In no event, including without limitation if Goods are nonconforming, defective, infringing, delayed, or not delivered, will Seller be liable for any special, contingent, incidental, indirect, or consequential damages (collectively, "Excluded Damages"), even if Seller has been advised of the possibility of such damages, whether under a contract, tort, warranty, property, or other legal theory. Excluded Damages include, but are not limited to, personal injury, property damage, anticipated profits, labor expended, delays, loss of use, and goodwill. In no event will Seller's aggregate liability to Purchaser, and all third parties, relating to or arising out of any Goods, exceed the purchase price of the Goods. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply to you.

9. **Returns.** Goods may be returned to Seller, for refund, shipping charges prepaid, within thirty (30) days from date of shipment from Seller's facility. Shipping charges, and any charges for calibration, certification or other services, will not be refunded. In order to be eligible for refund, returned Goods must be in new condition, in all original packaging, and include all documentation, accessories and parts that were included in the original shipment. If returned Goods do not meet the above requirements, Seller may in its discretion issue a partial refund, or return such Goods to Purchaser at Purchaser's expense. Notwithstanding the above, discontinued Goods, custom Goods, and special order Goods, including Goods assembled to Purchaser's requirements, may not be returned for refund or credit.

10. **Tooling and Designs.** All tooling, molds, fixtures, specifications, drawings, designs, data, information, methods, patterns, descriptions, programs, software, ideas and/or inventions made, used, conceived, developed or acquired by Seller incident to its performance hereunder, and all patent, trade-secret, know-how, copyright or other proprietary rights therein, will be the exclusive property of Seller. No part of the purchase price of any Goods delivered by Seller will be deemed consideration paid for any of the foregoing.

11. **Government Contracts.** If any purchase order indicates that the purchase is being made for use under a U.S. Government Contract, only those terms and conditions which are made mandatory by federal statute or regulation for inclusion in fixed price supply subcontracts covering standard commercial proprietary items sold to the public will be deemed incorporated herein by reference. Any other (nonmandatory) terms and conditions of the prime Government contract which are intended to be included herein must be set forth in a separate written document signed by an authorized officer of Seller in order to be binding on Seller.

12. **No Application to Licensed Products or Engineering Services.** These Standard Terms and Conditions only apply to the sale of the Goods, and not to any software or other products licensed to Purchaser or engineering services performed by Seller. All product licenses are governed by the terms and conditions contained in the license agreements covering such licensed products, and engineering services are governed by separate engineering services agreements.

13. **Changes.** Seller reserves the right to discontinue or modify any particular Goods at any time without prior notice. Prices and terms shown in any quotation issued by Seller shall apply only for the period indicated in the quotation and if there is no such indication, then for a period of fifteen (15) days.

14. **General.** These Standard Terms and Conditions will be governed by, and construed in accordance with, the laws of the State of California applied to agreements between California residents entered into and to be performed entirely in California. Any lawsuit to interpret or enforce this agreement may be brought only in Santa Clara County, California and Seller and Purchaser hereby consent to the exclusive jurisdiction and venue of such courts. The prevailing party in any suit or proceeding arising out of relating to this agreement shall be awarded its costs and reasonable attorneys' fees. The invalidity or unenforceability of one provision under one circumstance will not otherwise affect the validity or enforceability of any provision under any other circumstances.