

CLIMAX PORTABLE MACHINE TOOLS, INC.

2712 E. Second Street, Newberg, OR 97132-8210 USA Call toll free: 800-333-8311 or 503-538-2185
RENTAL TERMS AND CONDITIONS

1. **ACCEPTANCE.** The following Rental Terms and Conditions (the "*Terms*") are applicable to all rentals of Equipment (as defined in Section 3 below), and all quotations, order acknowledgements, and invoices from Climax Portable Machine Tools, Inc. ("*Climax*") and to all purchase orders from Climax's customers ("*Customer*"). Climax's quotation (the "*Quote*"), together with the Terms (collectively, the "*Agreement*"), are the only terms and conditions applicable to the rental of Equipment. **Climax hereby rejects any additional or different terms or conditions proposed by Customer, whether or not contained in any of Customer's business forms or Customer's website, and such additional or different terms and conditions will be void and of no effect unless in a writing specifically agreed to by Climax specifically referring to and agreeing to such additional or different terms and conditions.** Any changes to the Agreement must be in writing clearly identifying the change and signed by Climax.
2. **TERM.** This Agreement begins on the date that the Equipment (as defined in Section 3 below) is made available to Customer for delivery by Climax or Climax's designee and end on the date the Equipment is returned by Customer to Climax in accordance with Section 4 below.
3. **USE.** Customer warrants and agrees that Customer and each person who will use or operate the rented equipment described in the enclosed packing slip, invoice, bill of lading or other document (collectively with all accessories and related tools, the "*Equipment*"): (a) is familiar with the Equipment; (b) is experienced and knowledgeable about the processes, procedures and techniques necessary to operate the Equipment in a safe and workmanlike manner; (c) has read and understands the operator's manual for the Equipment (the "*Manual*"); (d) will use the Equipment in a careful and proper manner; (e) will comply with all federal, state and local laws, ordinances and regulations pertaining to possession, use or maintenance of the Equipment; (f) will not store or use the Equipment except at the location designated in the Quote and will not remove the Equipment from that location; and (g) will not modify the Equipment, change the color of the Equipment, or remove, obscure or modify any serial numbers, trademarks, logos, notices or other legends that identify the Equipment or its ownership.
4. **MAINTENANCE AND REPAIR; RETURN.** Customer agrees to maintain the Equipment in accordance with the Manual and to keep the Equipment in good repair and operating condition at all times, except for ordinary wear and tear. Climax reserves the right to charge Customer additional fees for any cost to repair or replace Equipment that has been modified or improperly used by Customer. At the end of the rental term, Customer will redeliver all of the Equipment (including all accessories and related tools) to Climax or Climax's designee in good repair and operating condition, free of contamination. Customer will pay the manufacturer's list price for all Equipment that has been damaged, altered, contaminated by radiation or other hazardous materials or lost during the rental term.
5. **TITLE TO EQUIPMENT.** Title to the Equipment will at all times remain with Climax unless Climax sells the Equipment to Customer as evidenced by a Bill of Sale signed by Climax. All sales of Equipment will be AS IS, WHERE IS unless Climax expressly agrees otherwise in writing.
6. **WARRANTIES; LIMITED LIABILITY.** Climax makes no warranties, express or implied, as to the Equipment. **Customer has selected the Equipment based upon Customer's own judgment and expressly disclaims any reliance upon any statements or representations made by Climax, its employees or agents. While Climax has made every effort to ensure that each item of Equipment has been refurbished and is in good working order prior to shipment to Customer, all Equipment is rented to Customer "AS IS" and "WITH ALL FAULTS" whether inherent, latent or patent. If for any reason the Equipment does not operate in accordance with the Manual, Customer should notify Climax immediately and Climax will use its commercially reasonable efforts to repair or replace that Equipment as quickly as possible. If Climax confirms that the Equipment is defective, Climax will pay all shipping costs relating to the return and replacement of that defective Equipment. To the maximum extent permitted by law, neither Climax nor its suppliers will be liable to Customer or to any other person for any penalties resulting from delays in receiving any Equipment or for any consequential, special, incidental, punitive or indirect damages of any kind relating to the Equipment, even if Climax has been advised of the possibility of such damages or even if such damages are foreseeable, and in no event will Climax's liability exceed an amount equal to the rental amount for the rental of the Equipment for one week.**
7. **PAYMENT OF RENT, INSURANCE, TAXES AND REPAIRS.** Climax will not accept any new orders from Customer if Customer is past due on any invoice, or if Customer is currently on a credit hold. Climax will invoice Customer periodically depending on the length of the rental agreement for the sums described in the Quote. Customer agrees to pay each invoice within 30 days after the date of that invoice unless both parties have expressly agreed to different payment terms in writing. If Customer at any time fails to pay any sums when and as due under this Agreement, Climax may, in addition to all other remedies specified in this Agreement, impose a late fee equal to the lower of 1.5% per month (i.e., 18% per annum) or the highest rate permitted by law, and the imposition of this fee will not in any way excuse or cure Customer's payment default. This is a "net" rental arrangement. That means that the rent does not include insurance, repairs and taxes, and Customer will be responsible for all such additional costs. It also means that Climax and not Customer will be entitled to all tax benefits associated with ownership of the Equipment. Customer will maintain and keep in full force and effect such insurance coverages as are customary in Customer's industry.
8. **CANCELLATION FEE.** If Customer reserves any Equipment and then cancels that reservation before the Equipment is shipped, Customer will pay Climax a cancellation fee equal to twenty percent (20%) of the rental amount that would have been due had Customer rented the Equipment for the time period specified in Customer's reservation request. Customer will pay the full rental amount for any orders that are cancelled after shipment.
9. **SHIPPING CHARGES.** Except as expressly provided in Section 6 above, Customer will be responsible for shipping charges from Climax's rental depot to Customer's destination and for return of the Equipment to Climax's rental depot.
10. **REMEDIES.** If Customer is in default, Climax may, without notice or demand, exercise any one or more of the following remedies: (a) take possession of any or all Equipment without any court order or other process of law; (b) terminate this Agreement; and/or (c) pursue any other remedy at law or in equity. In addition, Customer agrees to pay as additional rent any and all costs incurred by Climax, including the arbitrator's fees and reasonable attorney fees, in preserving Climax's rights or undertaking its remedies under this Agreement, whether before or during arbitration, trial, appeal or in any bankruptcy proceeding.
11. **SAFETY.** Customer will cause each person who receives or uses the Equipment to read and comply with all safety instructions provided by Climax, including all product safety notices, warnings, instructions and training materials, manuals, video tapes or similar materials (collectively, the "*Safety Documentation*"). Customer will instruct each user in the proper use of the Equipment and implement and enforce the safety provisions in the Safety Documentation. Customer will be solely responsible for complying with local, state and federal or provincial laws, codes or regulations relating to safety of the workplace where the Equipment is used.

12. **OWNERSHIP.** Climax, and not Customer, owns all rights in and to any patents, know-how, inventions, discoveries and improvements, and all technical information, drawings, data, ideas, designs, formulae, processes, procedures, works of authorship, Confidential Information (defined below) and all other intellectual property rights in any way associated with the Equipment, and reserves all rights with respect to that intellectual property. For purposes of this Agreement, "*Confidential Information*" means all technical and non-technical information provided by or on behalf of Climax to Customer, or observed by Customer during visits to or in interactions with employees or agents of Climax, regarding Climax or any of its affiliates, including without limitation patents and patent applications; trade secrets; proprietary information; ideas; samples; media; techniques; sketches; drawings; works of authorship; models; inventions; know-how; processes; apparatuses; equipment; algorithms; software programs; software source documents; formulae related to current, future and proposed products and services; information concerning research, experimental work, development, design details, design specifications and engineering; financial information; procurement requirements; customer lists; information concerning purchasing, manufacturing, investors, employees, and business and contractual relationships; business forecasts, sales, merchandising and marketing plans; and information Climax provides regarding third parties. The term "Confidential Information" will not include information that Customer conclusively documents: (a) was in the public domain at the time it was communicated to Customer by or on behalf of Climax; (b) entered the public domain through no fault of Customer after it was communicated to Customer by or on behalf of Climax; (c) was in Customer's possession free of any obligation of confidence at the time it was communicated to Customer by or on behalf of Climax; (d) was rightfully communicated to Customer free of any obligation of confidence after it was communicated to Customer by or on behalf of Climax; or (e) was developed by employees or agents of Customer independently of and without reference to any information communicated to Customer by or on behalf of Climax.

13. **INDEMNITY.** Customer will indemnify, defend and hold Climax, its directors, officers, employees, agents, affiliates and insurers harmless and its and their successors and assigns harmless from and against any and all actions, claims, demands, lawsuits, losses, expenses, damages, injuries, expenses and liabilities (including collection agency fees and costs, arbitrator fees and costs and attorney fees and cost at trial or on appeal) arising from or related to: (a) any Equipment to the extent Customer designed or furnished detailed specifications for that Equipment, including any actual or alleged infringement and product liability (except those caused solely by defects in the materials provided by Climax or Climax's negligence); (b) Customer's breach of this Agreement; (c) any improper alteration, installation, repair or maintenance of the Equipment, including removing guards or defeating interlocks or other safety devices; (d) any use of the Equipment contrary to the Safety Documentation or any of Climax's other instructions or applicable law, or any other misuse of the Equipment; and (e) any failure to provide, implement or enforce the Safety Documentation. TO THE EXTENT NECESSARY TO PERFORM ITS OBLIGATIONS UNDER THIS SECTION, EACH PARTY EXPRESSLY WAIVES ANY IMMUNITY OR EXEMPTION FROM LIABILITY FOR THE PERSONAL INJURY OR DEATH OF ITS EMPLOYEES THAT MAY EXIST UNDER, OR ANY RIGHT TO RECEIVE CONTRIBUTION FROM THE OTHER PARTY CREATED BY, THE WORKER'S COMPENSATION LAWS OF THE STATE WHERE THE INJURY OCCURRED OR THE EMPLOYEE IS LOCATED.

14. **NONSOLICITATION.** Customer will not directly or indirectly approach, solicit, or hire any Climax employee for a period of one year after the return of the Equipment. Placing a general "help wanted ad" will not constitute a breach of this Section 14.

15. **COSTS AND ATTORNEY FEES; CHOICE OF LAW; CONSENT TO JURISDICTION.** Customer will pay such costs, collection agency commissions, expenses and reasonable attorney fees (including at trial and on appeal) as Climax may incur in any manner of collection of any sums past due. If this Agreement become the subject of any suit, arbitration or other proceeding or if Customer becomes the subject of any bankruptcy proceeding (including with respect to any motion for relief from the automatic stay, objection to a plan or reorganization or confirmation or other similar proceeding), the prevailing party will be entitled to its costs and attorney fees, whether incurred in such proceeding or in any post judgment proceeding. Oregon law, without resort to its choice of law provisions, will govern. Customer irrevocably consents to the jurisdiction of and venue in any state or federal court located in Multnomah County, Oregon for any legal action arising out of or in relation to any Equipment or this Agreement, and agrees that Customer will not initiate any action against Climax in any other jurisdiction.

16. **COMPLIANCE WITH U.S. LAWS AND STANDARDS.** Customer will comply with all applicable national, state, municipal and local laws as well as all rules, regulations, executive or other orders, codes, standards, requirements and regulations thereunder, including but not limited to, the Fair Labor Standards Act of 1938, as amended, the Occupational Safety and Health Act of 1970, as amended, the Toxic Substance Control Act (P.L. 94-469), as amended, ANSI, ASME, AIEE, ASTM and NEMA in effect at the time this Agreement is placed unless otherwise specified and any and all laws, rules, regulations, orders, directives or ordinances affecting, controlling, limiting, regulating, pertaining or related to emissions, discharges, hazardous, toxic, radioactive, substances, materials or wastes ("Governmental Requirements"), to the extent applicable to the Equipment. Customer will comply with all applicable provisions of Executive Agreement 11246 of September 24, 1965, as amended, the terms of which are incorporated herein by this reference and made a part of this Agreement. Customer is hereby notified that it is the policy of Climax to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action will be taken by Customer, with respect to itself and any of its subcontractors, vendors and suppliers to ensure compliance with such laws. All federal, state and local equal opportunity and affirmative action requirements with regard to race, gender, creed, color, age, religion, national origin, disability or veteran status, are incorporated into this Agreement by reference. Customer will give all notices, pay all fees and take all other action which may be necessary to conduct its business in accordance with all applicable statutes, ordinances, rules and regulations including, without limitation, the above stated standards and acts, any statutes regarding qualification to do business and any statutes prohibiting discrimination among employees because of race, creed, color, national origin, age or sex or the employment of convict labor.

17. **COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT.** Customer will comply with the United States Foreign Corrupt Practices Act and any other similar laws, statute, rule or regulation of any country in which Customer operates. In addition, none of Customer, its owners, officers, directors, employees or agents have not and will not pay, offer, promise, or authorize the payment, directly or indirectly, of any monies or anything of value to any government official or employee, or any political party or candidate for political office for the purpose of influencing that person's acts or decisions to obtain or retain business. Customer will sign annual or periodic acknowledgements of compliance with the Foreign Corrupt Practices Act at Climax's request, which requests may be made by Climax in its sole discretion. If Climax has reason to believe that a breach of this Section has occurred or may occur, Climax has the right to audit Customer in order to satisfy Climax that no breach has occurred. Upon request by Customer, Climax will select an independent third party to conduct an audit to confirm to Climax that no breach has occurred or will occur. Customer will cooperate fully in any audit conducted by or on behalf of Climax. If this Section is violated, the Agreement will automatically terminate without the requirement of any written notice or other action by Climax. Customer will further indemnify and hold Climax harmless for any and all claims, losses or damages arising from a breach of this Section or the cancellation of the Agreement, or both.

18. **MISCELLANEOUS.** Any portion of this Agreement that is found to be unenforceable will not invalidate the remainder of this Agreement. Any delay in enforcing or any failure to enforce any provision of this Agreement will not be deemed a waiver of any other or subsequent breach of this Agreement unless such waiver is in writing and is signed by an officer of Climax. Caption headings are for convenience of reference only and will not affect the interpretation of this Agreement. Customer has had the opportunity to consult with an attorney with respect to this Agreement and has either reviewed this Agreement with its attorney or waived such right. Therefore, ambiguous terms will be construed without regard to authorship. The terms "including" and "includes" are not limiting in any way. This Agreement, together with Climax's invoices, contain the entire understanding between the parties and there are no other terms, conditions, warranties or representations other than those contained in this Agreement and Climax's invoices. This Agreement may not be amended orally.