



# CLIMAX PORTABLE MACHINE TOOLS, INC.

2712 E. Second St. Newberg, OR 97132 USA  
Call toll free: 1-800-333-8311 or 1-503-538-2185

## Standard Products

### Invoice Terms And Conditions (these "Terms")

- PRICES; INVOICES.** Prices are subject to change without notice. The amount reflected in this invoice will be deemed accepted and conclusively binding upon Customer as an account stated unless Customer notifies Climax Portable Machine Tools, Inc. ("*Climax*") in writing within 30 days after the date of this invoice.
- ACCEPTANCE OF TERMS.** Climax's acceptance of Customer's order is expressly conditioned upon Customer's agreement that those orders will be governed by these Terms. *These Terms take precedence over any terms and conditions in Customer's order or any of Customer's other documents.*
- TERMS OF SALE, DELIVERY AND CREDIT.** The goods described in this invoice (the "*Goods*") are sold FOB Climax's loading dock. All prices for the Goods and any services described in this invoice (the "*Services*") are exclusive of sales taxes, shipping and handling, and Customer will pay those taxes and charges.
- TERMS OF PAYMENT.** 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. Unless expressly provided otherwise in this invoice, the Goods sold and Services provided on open account will be due and payable 30 days after the invoice date. Any sums not paid when due are subject to a service charge of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is lower. Customer will be ineligible for any discount if it has an overdue balance. Failure to promptly pay this invoice according to its terms will constitute a default by Customer under all outstanding invoices. If Customer breaches any of its obligations or any representation is or becomes false in any material respect, Climax may cancel Customer's orders, refuse shipment, stop delivery in transit, reclaim any Goods for which payment has not been made, cease providing Services, and exercise all other legal rights and remedies.
- LIMITED WARRANTY.** Unless expressly provided otherwise in a written document signed by Climax, Climax warrants that at the time of shipment all new Goods and all Services will be free from defect in materials and workmanship, and in addition, all new machines provided by Climax will conform to any written specifications signed by Climax, subject to variations and tolerance customary in Climax's industry. Climax warrants that certified pre-owned Goods will be free from defect in materials and workmanship. Used Goods are sold **AS IS** and **WITH ALL FAULTS**, whether inherent, latent or patent. CLIMAX MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, AND CLIMAX EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty does not apply to any Goods that have been (a) subject to misuse, neglect, abuse, accident or improper installation; (b) used contrary to Climax's instructions; or (c) repaired or altered by anyone other than Climax. This warranty is not assignable.
- LIMITED REMEDY; LIMITATIONS ON DAMAGES; STATUTE OF LIMITATIONS.** IF ANY GOODS OR SERVICES FAIL TO CONFORM TO THE LIMITED WARRANTY DESCRIBED IN SECTION 5, CLIMAX WILL, AT ITS OPTION, AND AS CUSTOMER'S EXCLUSIVE REMEDY, REPAIR OR REPLACE THOSE DEFECTIVE GOODS AND REPERFORM THOSE DEFECTIVE SERVICES, OR REFUND CUSTOMER'S INVOICE PRICE, BUT ONLY IF CUSTOMER PROMPTLY GIVES CLIMAX WRITTEN NOTICE SPECIFYING IN DETAIL THE NONCONFORMITY OR DEFECT, BUT IN ANY EVENT WITHIN THE FOLLOWING APPLICABLE WARRANTY PERIODS: (a) ONE YEAR AFTER DELIVERY FOR NEW MACHINES; AND (b) 90 DAYS AFTER DELIVERY FOR NEW PARTS OR THE PERFORMANCE OF SERVICES, OR FOR CERTIFIED PRE-OWNED GOODS. IN THE CASE OF DEFECTIVE GOODS, CUSTOMER MUST RETURN THOSE GOODS TO CLIMAX IN ACCORDANCE WITH SECTION 8 BELOW. CLIMAX WILL NOT BE LIABLE FOR ANY LOST PROFITS, INTERRUPTION OF BUSINESS OR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES SUFFERED OR SUSTAINED BY CUSTOMER, WHETHER ARISING UNDER CONTRACT, TORT OR ANY OTHER THEORY, EVEN IF CLIMAX HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. IN NO EVENT WILL CLIMAX BE LIABLE TO CUSTOMER FOR AN AMOUNT GREATER THAN THE INVOICE PRICE FOR THE GOODS OR SERVICES DESCRIBED IN THIS INVOICE. THESE LIMITATIONS WILL APPLY EVEN IF THE LIMITED REMEDY IN THIS SECTION FAILS OF ITS ESSENTIAL PURPOSE.
- EXTENSION OF LIMITED REMEDY.** Customer may purchase an extension of the warranty period set forth in Section 6 applicable to Goods consisting of new machines for one or two additional years (the "Extended Warranty"). Customer's purchase of an Extended Warranty must be stated in the invoice in which the Customer purchases the Goods covered by the Extended Warranty, and does not alter the limited remedy provided in Section 6 in any way other than with regard to the time in which the written notice specifying the nonconformity or defect must be submitted to Climax by Customer. If Customer purchases an Extended Warranty, and if any Goods covered by the Extended Warranty fail to conform to the limited warranty described in Section 5, Customer must promptly give Climax written notice specifying in detail the nonconformity or defect prior to the expiration of the Extended Warranty.
- CANCELLATION AND RETURN POLICY.** If an order is cancelled by Customer before Climax orders material for, or begins the manufacture of, the Goods, Customer will pay a cancellation fee equal to 5% of the invoice price. If an order is cancelled by Customer after material has been purchased or manufacturing has begun, Customer will pay a cancellation fee equal to the greater of 10% of the invoice price, including handling fees, or the actual costs incurred by Climax. If an order is cancelled by Customer after the Goods have been manufactured, Customer will pay a cancellation fee equal to the greater of 20% of the invoice price, including handling fees, or the actual costs incurred by Climax. Climax will have the right to cancel orders in the event of Customer's delinquency in payment as aforesaid, for any acts or omissions of Customer that delay Climax's performance hereunder, or in the event of Customer's bankruptcy or insolvency. Climax will not accept returns of custom made Goods. Climax must pre-approve all other returns. Any Goods returned by Customer must be in the same condition as when delivered. Customer will pay all return

freight charges. If Customer returns defective Goods, Climax will reimburse those freight charges. Customer will pay a restocking charge equal to 20% of the invoice price for any returned Goods other than defective Goods.

9. **INSPECTIONS.** Any inspection of Goods agreed to by the parties will be made at Climax's plant or other source of supply and must be made before shipment. Any Goods not rejected by Customer before shipment will be deemed accepted. In all other circumstances, Customer must notify Climax in writing of any claim for shortages, errors or obvious defects within 15 days after Customer's receipt of the Goods.
10. **FORCE MAJEURE.** If a delivery date is specified, that date will be extended to the extent that delivery is delayed by reason of fire, flood, sabotage, war, riot, strike, labor dispute, natural disaster, material shortages, power failure, machinery breakdowns, delay of carriers, acts of terrorism or any other event beyond Climax's reasonable control.
11. **SAFETY.** Customer will cause each person who receives or uses the Goods 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 Goods 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 Goods are 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 in Section 12 below) and all other intellectual property rights in any way associated with the Goods, and reserves all rights with respect to that intellectual property.
13. **CONFIDENTIALITY.** If Climax and Customer have executed a separate agreement governing the exchange of confidential information, that separate agreement will govern the exchange of all Confidential Information between the parties. If Climax and Customer have not executed a separate agreement governing the exchange of Confidential Information, then this Section 13 of these Terms will govern Climax's Confidential Information disclosed to Customer.

13.1. The term "*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.

13.2. Customer agrees that it (a) will use the Confidential Information only to perform Customer's obligations under these Terms; (b) will keep the Confidential Information in strict confidence and will not disclose to any third party the existence, source, content or substance of the Confidential Information, except as required by court order or other applicable law; (c) will disclose Confidential Information only to its employees, independent contractors or agents with a need to know; and (d) will require each such employee, independent contractor or agent to comply with this Section 13. Customer acknowledges and agrees that any breach of this Section 13 of these Terms by any employee, independent contractor or agent of Customer will constitute a breach of these Terms by Customer.

13.3. If Customer is required to disclose any Confidential Information under any subpoena, interrogatory, request for production or other compulsory judicial or administrative process that calls for or may result in the disclosure of any Confidential Information, Customer will immediately notify Climax so that Climax may seek protection of that Confidential Information if it wishes to do so. Only after giving such notice may Customer disclose such Confidential Information and then only to the extent Customer is legally compelled to do so. Customer will immediately notify Climax upon discovering any loss or unauthorized disclosure of any Confidential Information.

13.4. When Customer has fully performed its obligations under these Terms, or at any other time upon Climax's request, Customer will return to Climax the originals and all copies of Confidential Information that Customer received from Climax and will destroy the originals and all copies of all Confidential Information prepared by or on behalf of Customer for its internal use.

13.5. Customer's obligations under this Section 13 will continue until the information no longer qualifies as Confidential Information.

14. **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 Goods to the extent Customer designed or furnished detailed specifications for those Goods, 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 these Terms; (c) any improper alteration, installation, repair or maintenance of the Goods, including removing guards or defeating interlocks or other safety devices; (d) any use of the Goods contrary to the Safety Documentation or any of Climax's other instructions or applicable law, other than for the purpose for which the Goods were designed, or any other misuse of the Goods; 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.

15. **NONSOLICITATION.** Customer will not directly or indirectly approach, solicit, or hire any Climax employee for a period of one year after delivery of the Goods. Placing a general "help wanted ad" will not constitute a breach of this Section 15.
16. **INSURANCE.** Customer will maintain and keep in full force and effect, at a minimum, the following insurance coverages: (i) \$1,000,000 personal/advertising injury per occurrence; (ii) \$2,000,000 products/completed operations aggregate; and (iii) \$2,000,000 general aggregate. Such insurance will be with insurers acceptable to Climax, will name Climax as an additional insured and will provide that Climax be given 30 days' advance written notice of cancellation or reduction in coverage, and will be primary with respect to any insurance or self-insurance programs maintained by Climax. Customer will provide a certificate (or certificates) of insurance evidencing the foregoing coverage within 10 business days of signing these Terms.
17. **COMPLIANCE WITH U.S. LAWS AND STANDARDS.** Customer will comply with all applicable national, state, municipal and local laws and ordinances, as well as all rules, regulations, executive or other orders, codes, standards, requirements, regulations thereunder (collectively, the "Governmental Requirements"), 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 these Terms is placed unless otherwise specified 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, to the extent applicable to the Goods, and will ensure that its customers and subcontractors comply with those Governmental Requirements. Without limiting the preceding, Customer will not resell or deliver the Goods into any country specified by the US State Department as a prohibited country. The US State Department maintains a website of prohibited countries and periodically updates that list. Customer will be responsible for knowing the countries that are on the most recent list of prohibited countries maintained by the US State Department. It is Climax's policy to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto, including federal, state and local equal opportunity and affirmative action requirements with regard to race, gender, creed, color, age, religion, national origin, disability and veteran status.
18. **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.
19. **MISCELLANEOUS.** Any portion of these Terms that is found to be unenforceable will not invalidate the remainder of these Terms. Any delay in enforcing or any failure to enforce any provision of these Terms will not be deemed a waiver of any other or subsequent breach of these Terms 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 these Terms. Ambiguous terms will be construed without regard to authorship. The terms "including" and "includes" are not limiting in any way.
20. **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 these Terms 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, and not the United Nations Convention on Contracts for the International Sale of Goods. 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 Goods or Services or these Terms, and agrees that Customer will not initiate any action against Climax in any other jurisdiction.
21. **ENTIRE AGREEMENT; MODIFICATIONS.** These Terms and Customer's credit application contain the entire understanding between the parties, and will apply to the Goods and Services described in this Invoice as well as any other goods and services provided by Climax. **CUSTOMER AGREES THAT ALL PURCHASE ORDERS WILL BE SUBJECT TO AND GOVERNED BY THESE TERMS.** Customer acknowledges that there are no other terms, conditions, warranties or representations other than those contained in Customer's credit application and these Terms. These Terms may not be amended orally.

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