

"CLIMAX AND SELLER AGREE THAT CLIMAX'S PURCHASE ORDER TERMS AND CONDITIONS APPLY TO ALL GOODS AND SERVICES DESCRIBED IN THE PURCHASE ORDER.

CLIMAX PORTABLE MACHINE TOOLS, INC.

TERMS AND CONDITIONS

- 1. Entire Agreement.** Upon acceptance by Seller, (a) these Terms and Conditions, (b) the terms of any written purchase order (an "Order") (including any change order executed by Climax and Seller), and (c) all specifications, samples and descriptions provided to Climax with respect to the ordered goods and/or services (together, this "Agreement"), constitute the entire agreement between Climax and Seller with respect to the goods and services ordered. This Agreement supersedes all prior and contemporaneous oral or written agreements, understandings and communications between Climax and Seller. Climax will be obligated to purchase goods or services only pursuant to an Order submitted by Climax and accepted by Seller; these Terms and Conditions alone will not obligate Climax to purchase any goods or services from Seller.
- 2. Acceptance of Terms by Seller.** This Agreement is an offer, not an acceptance. Climax expressly limits acceptance of each Order to the terms of this Agreement. Climax hereby timely objects to any additional or different terms in any invoice, confirmation or other document, unless preceded by a separate writing signed by Climax specifically modifying these terms. Seller will be deemed to have accepted the terms of this Agreement (even if Seller purports to condition its acceptance on Climax's agreement to inconsistent, additional or different terms) when Seller (a) acknowledges an Order from Climax in writing or (b) makes any shipment or performance in response to or in anticipation of an Order. No term of any invoice or other document issued by or on behalf of Seller that is inconsistent with this Agreement will bind Climax.
- 3. Purchase Price and Payment.** The purchase price for the goods and/or services ordered will be set forth on the face of the Order. Invoices must be dated no earlier than the shipping date of the goods or completion of the services unless otherwise specified on the face of, or on any attachment to, the Order. Seller must send all invoices to Climax at **Climax Portable Machine Tools, Inc., 2712 East Second Street, Newberg, OR 97132**. Seller's invoices will contain the following information (if applicable): Climax's Order number; part number; quantity; unit of measure; a description of the goods and/or services; unit cost; total cost; sales tax; cash discount terms; method of shipment; and point of destination. Unless Climax specifies otherwise, the purchase price will include all freight charges. If Climax agrees to pay freight, Climax will pay only actual freight costs that are supported by a separate freight bill and bill of lading from the carrier. No interest, service charge or finance charge will be assessed to Climax or accrue on Climax's account unless agreed to in a separate writing signed by Climax. Climax will pay each invoice, provided that the invoice meets the requirements established above. Unless otherwise specified in the Order, invoices are payable net 45 days after the later of Climax's receipt of the goods and/or completion of the services or Climax's receipt of an invoice meeting the requirements set forth above. If Climax in good faith disputes a portion of the invoiced amount, Climax will pay the undisputed portion. Payment will not constitute acceptance of the goods and/or services unless payment is tied to a milestone that includes satisfactory completion of acceptance testing.
- 4. Title and Delivery.** Unless Climax otherwise specifies, all goods must be delivered freight prepaid, F.O.B. Climax's specified facility (or other destination designated in writing by Climax). Notwithstanding the terms of shipment, Seller will bear the risk of loss of or damage to the goods for any reason until delivery of the goods to the F.O.B. point. Climax will not pay any packing charges unless those charges are itemized in the Order. Delivery of goods and performance of services must be completed within the time limits specified by Climax. If necessary, Seller will, at no additional cost to Climax, employ accelerated measures to meet the specified delivery schedule. Seller will notify Climax immediately if Seller is unable to deliver any goods or complete any services within the specified delivery schedule. If delivery or performance is not timely completed, Climax may, at its election, refuse any or all of the goods and services and cancel all or any part of the Order. Seller will be responsible for damages incurred by Climax as a result of Seller's failure to deliver the goods or services within the time limits specified in the Order. Seller will not ship goods C.O.D. without Climax's prior written consent.
- 5. Acceptance of Goods and Services by Climax.** Climax will be deemed to have accepted the goods and/or services on the date that Climax has completed its testing and/or inspection and has determined that the goods and/or services perform in accordance with all specifications and warranties (the "date of acceptance"). Payment for goods or services will not constitute acceptance. Climax will have the right to inspect and test the goods and/or services and reject any nonconforming goods and/or services. In addition to any other remedy provided by law, Climax will have the right to: (a) reject and refuse acceptance; (b) require prompt correction of any nonconforming goods or services; or (c) accept any nonconforming goods or services with an equitable adjustment in price. Climax may return nonconforming goods to Seller at Seller's risk and expense, including transportation and handling costs, and Seller will promptly refund to Climax any prepayment or deposit made by Climax. Acceptance will not relieve Seller from its responsibility under any warranty.
- 6. Warranties.** Seller expressly warrants that all services (to the extent applicable) and all goods will: (a) be free from defects in materials and workmanship, (b) be of merchantable quality, (c) be fit for the purposes for which goods of that type are ordinarily used, and (iv) perform in conformity with all specifications, samples and descriptions provided to Climax; (d) be free from all liens, charges, encumbrances, and claims of every nature; (e) in the case of services, be performed in compliance with all applicable laws, regulations, and standards; and (d) in the case of goods, not infringe on any patent, copyright, trademark or proprietary rights of any third party. All electrical items included in the goods will be UL approved. Without limiting the preceding, unless Supplier obtains Climax's prior written consent, Supplier will: (1) purchase and use only the parts and components described in the Order; (2) not purchase any components manufactured by anyone other than the manufacturers listed in the Order; (3) not change the design of any goods or Supplier's purchase or assembly process; (4) not change any testing process outlined in the relevant Order; and (5) not change any other process, procedure, method or part associated with the goods or services. These warranties will survive satisfaction of the Order and are in addition to any warranties of greater scope given by Seller to Climax. Seller assigns to Climax the benefits of all warranties given by any person or entity from whom Seller purchased any goods or services. Without limiting any other rights or remedies available to Climax, if any goods or services are defective in any way or fail to conform in any respect to the warranties above, Seller will, at its own expense, and within a reasonable time after notice, repair, replace or correct any defective or nonconforming goods or services, provided that Seller is notified of the defect or nonconformity within a period of one year after the date Climax discovers the defect. Whether or not Seller repairs, replaces or corrects any defect within a reasonable time, Seller will reimburse Climax for reasonable expenses incurred in connection with such failure and in enforcing Climax's warranty rights (including its reasonable attorney fees at trial and on appeal), in addition to any other remedy Climax may have. If Climax is not the end-user of any goods and Climax sells such goods to a third party, then all warranties, rights and remedies available to Climax will extend to such third party in addition to Climax.

7. Compliance with Applicable Laws and Regulations. Supplier will (a) make, package, store, sell, transport and ship the goods and will perform the services in full compliance with all applicable laws and regulations and in accordance with generally accepted safety, engineering and manufacturing standards and other prevailing standards of care, loyalty and timeliness applicable at the time of performance; (b) obtain all appropriate government approvals pertaining to the manufacturing, packaging, storage, sale, transportation and shipment of the goods and performance of the services.

1. **Assembly.** Supplier will assemble the goods in compliance with (a) applicable law; (b) any standards set forth in the applicable Order and in any event in a manner that equals or exceeds applicable industry standards. If Supplier is ISO certified or holds any other relevant certification at the time Climax issues an Order, Supplier will retain that certification during the performance of its obligations under that Order. If Supplier loses any such certification or if its status under any of those certifications is degraded during the term of this Agreement, Supplier will notify Climax within 10 days of the date of that loss or change.
2. **Indemnity.** Seller will hold harmless, indemnify and defend Climax, its directors, officers, employees, agents, affiliates and insurers, and its and their successors and assigns, from, for and against all actions, claims, demands, lawsuits, losses, damages, injuries, expenses (including arbitrator fees and costs and attorney fees and costs at trial and on appeal) and other liabilities of any nature from or related to Seller's performance, non-performance or breach of the terms of this Agreement by Seller (including its employees, agents, contractors, subcontractors and consultants), any nonconformity, defect or breach of warranty as to the goods or services, or any violation or infringement by the goods or services of any patent, copyright, trademark, trade secret, nondisclosure agreement, or other proprietary rights of any third party, except and to the extent that claim is attributable to: (a) the negligent act or omission of Climax, its directors, officers, employees and agents; (b) the failure of Climax or its employees to comply with applicable law or regulation; or (c) any breach of this Agreement by Climax. In connection with Seller's indemnity obligations under this Section 9, Seller will defend at its expense any suit brought against Climax and will pay to Climax all legal fees, costs and damages finally awarded in that suit.
3. **Intellectual Property Rights.** Unless expressly provided otherwise in an Order:

10.1 Climax's Intellectual Property Rights. Climax, and not Seller, 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 11 below) and all other intellectual property rights made, conceived or reduced to practice or tangible form by Climax, by Seller, by their agents, or by any two or more of them working together under any Order, except as provided in Section 10.4 below. To the extent they qualify under applicable law, all works of authorship described above will be "works made for hire." To the extent they do not qualify as "works made for hire," Seller hereby assigns to Climax exclusively, without further compensation, all present and future right, title and interest in and to those works of authorship and all other intellectual property rights described in this Section 10.1, and they will immediately and automatically be the sole and absolute property of Climax. Upon Climax's request and at Climax's cost, Seller will execute and deliver to Climax all documents necessary to perfect Climax's right, title and interest in and to each of the intellectual property rights described above, both domestically and abroad. Seller irrevocably designates and appoints Climax and its duly authorized agents as Seller's attorney-in-fact, to act for and on its behalf to execute and file those documents if Climax is unable, after reasonable effort, to secure Seller's assistance for any reason.

10.2 Restrictions. To induce Climax to enter into this Agreement and the Orders, Seller agrees that it will not at any time (a) use Climax's Confidential Information or any other Climax intellectual property for any purpose other than to manufacture and/or assemble goods and perform services for Climax; or (b) reverse engineer, design around or otherwise use any Climax intellectual property for competitive purposes or as a basis for the design or creation of any product, formula or process similar to any product, formula or process that embodies any Climax intellectual property.

10.3 Disclosure Requirement. If at any time Climax discloses to Seller any information that is similar to information that Seller is in the process of developing for itself or others, Seller will promptly notify Climax of that fact in writing. Unless Seller gives that notice before Seller begins to perform work for Climax, Seller will not thereafter develop any product or perform any service using information similar to Climax's Confidential Information or other intellectual property except in compliance with the express specific written instructions of a customer.

10.4 Seller Intellectual Property. To the extent Seller owns any intellectual property before Seller incorporates that intellectual property in any goods or services it provides to Climax ("Pre-existing IP"): (a) Seller owns that Pre-existing IP; and (b) if and to the extent Seller incorporates any Pre-existing IP into any goods or services it provides to Climax, Seller hereby grants to Climax a nonexclusive, irrevocable, fully paid up, perpetual, worldwide, transferable license to use, copy, modify, make, have made, sell, distribute or have sold or distributed, disclose, publicly display, publicly perform and sublicense that Pre-existing IP.

10.5 No Implied Rights. Except as expressly provided in this Section 10, each party will retain all right, title and interest in and to its own intellectual property.

10.6 Non-Exclusivity. Nothing in this Agreement or any Order will prevent Climax from purchasing goods or services from other sellers that are the same as or similar to the goods and services Climax purchases from Seller.

11. Confidentiality. If Climax and Seller 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 Seller have not executed a separate agreement governing the exchange of Confidential Information, then this Section 11 of the Agreement will govern Climax's Confidential Information disclosed to Seller.

11.1 The term "Confidential Information" means all technical and non-technical information provided by or on behalf of Climax to Seller, or observed by Seller 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, investing, 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 Seller conclusively documents: (a) was in the public domain at the time it was communicated to Seller by or on behalf of Climax; (b) entered the public domain through no fault of Seller after it was communicated to Seller by or on behalf of Climax; (c) was in Seller's possession free of any obligation of confidence at the time it was communicated to Seller by or on behalf of Climax; (d) was rightfully communicated to Seller free of any obligation of confidence after it was communicated to Seller by or on behalf of Climax; or (e) was developed by employees or agents of Seller independently of and without reference to any information communicated to Seller by or on behalf of Climax.

11.2 Seller agrees that it (a) will use the Confidential Information only to perform Seller's obligations under this Agreement; (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 11. Seller acknowledges and agrees that any breach of this Section 11 by any employee, independent contractor or agent of Seller will constitute a breach of this Agreement by Seller.

11.3 If Seller 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, Seller 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 Seller disclose such Confidential Information and then only to the extent Seller is legally compelled to do so. Seller will immediately notify Climax upon discovering any loss or unauthorized disclosure of any Confidential Information.

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

11.5 Seller's obligations under this Section 11 will continue until the information no longer qualifies as Confidential Information.

12. Insurance. Seller will maintain and keep in full force and effect the following insurance coverages: (i) statutory workers compensation; (ii) \$1,000,000 employer liability; (iii) \$1,000,000 each occurrence commercial general liability; (iv) \$1,000,000 personal/advertising injury per occurrence; (v) \$2,000,000 products/completed operations aggregate; (vi) \$2,000,000 general aggregate; (vii) \$100,000 damage to premises; (viii) \$5,000 medical expenses; (ix) \$1,000,000 per occurrence business automobile liability; (x) \$1,000,000 umbrella liability. 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. Seller will provide a certificate (or certificates) of insurance evidencing the foregoing coverage within 10 business days of signing this Agreement.

13. Changes. Climax reserves the right at any time to change any one or more of the following: (a) specifications, drawings and data incorporated in the Order where the goods or services are to be specially manufactured or provided for Climax; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and (e) increase or decrease of up to 20% in quantities of goods and/or services; provided, however, that changes under subsection (a) above may be made only before any special manufacturing of such goods has commenced. If any change described above causes an increase or decrease in the cost of or the time required for performance of the Order, an equitable adjustment will be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustment under this clause will be deemed waived unless asserted in writing within 10 business days after receipt by Seller of Climax's request for change. Except as provided above, Climax and Seller must agree in writing to all amendments of or modifications to the Order.

14. Returns. Climax may return any stock goods to Seller for full credit as long as the returned goods are in saleable condition and have not been discontinued by Seller. (Stock goods will be deemed to be discontinued by Seller 90 days after Climax receives written notice that Seller intends to discontinue those goods).

15. Term and Termination. This Agreement will remain in effect until either party terminates it in accordance with the terms of this Section 15; however, termination of this Agreement will not apply to or affect any Orders that are outstanding on the effective date of that termination, and this Agreement will continue to apply to those Orders.

15.1 Termination of Orders for Cause. Either party may terminate an Order in whole or in part without cost or liability by giving written notice to the other party, if the other party: (a) ceases to conduct its operations in the normal course of business; (b) becomes insolvent; (c) makes a general assignment or arrangement for the benefit of creditors; (d) files (or has filed against it) a petition for bankruptcy, reorganization or rearrangement and, in the case of an involuntary petition, the petition is not dismissed within 60 days; or (e) has a trustee or receiver appointed to take possession of any of its assets. In addition, if one party has breached a material provision of this Agreement or any Order, the other party may terminate any or all outstanding Orders: (i) effective immediately, by giving the other party written notice, if that breach is incapable of being cured; or (ii) if that breach is capable of being cured, the breach remains uncured for 30 days after the breaching party receives notice of the breach, except that nothing in this Section 15.1 will extend the delivery/ship date under any Order. For purposes of this Section, a breach of Section 10 (Intellectual Property Rights); Section 11 (Confidentiality); and any provision described as incapable of being cured in any Order will constitute a material breach that is incapable of being cured.

15.2 Termination of Orders for Convenience. Climax may, without cause and at any time before performance of services or shipment of goods (or, in the case of specially manufactured goods, before manufacturing has begun) terminate an Order in whole or in part without cost or liability by giving written notice to Seller. Climax may terminate any or all outstanding Orders at any time without cause, and in that event, Seller will immediately stop work on the goods and services described in those Orders, and Climax's sole liability to Seller will be to pay Seller the Termination Payment described below.

15.3 Termination Payment. If Seller terminates any Order for cause under Section 15.1 or if Climax terminates any Order for convenience under Section 15.2, Climax's sole obligation to Seller will be to pay Seller for the following (the "Termination Payment"): Seller's out of pocket costs, except that Climax will not be obligated to pay for items that upon Climax's request Seller is able to return or use in Seller's operations or for Seller's other customers. Upon Climax's payment of the Termination Payment, Seller will promptly deliver all nonreturnable, unusable materials, components, work-in-process and finished goods and other materials to Climax.

15.4 Return of Climax Property. Upon termination of this Agreement or any Order for any reason, or earlier at Climax's request, Seller will return to Climax: (a) all property provided by Climax to Seller, including equipment, designs and any other tangible or intangible property.

1 **Survival.** The following will survive and continue in full force and effect after this Agreement expires or is earlier terminated: Section 6 (Warranties); Section 7 (Compliance with Applicable Laws and Regulations); Section 9 (Indemnity); Section 10 (Intellectual Property Rights); Section 11 (Confidentiality); this Section 15.5 (Survival); Section 16 (Taxes); Section 19 (Notices); Section 20 (Miscellaneous); any other indemnity obligation; and each other provision of this Agreement or any Order (including its exhibits, schedules and the other attachments) that expressly or by its nature provides for rights, obligations or remedies that extend beyond the expiration or earlier termination of this Agreement or that Order; and all claims that arose before the expiration or earlier termination of this Agreement or that Order.

2 **Taxes.** Unless otherwise agreed in writing, the price of the goods and/or services includes all foreign, federal, state and local sales and use taxes, ad valorem taxes, tariffs, duties, commissions and other similar charges, imposed on any goods or services, or any part of the Order. Seller will hold harmless, indemnify and reimburse Climax for any such taxes and other charges (including penalties and interest) that Climax pays.

3 **Security Agreement.** To the extent Climax has made any payments to Seller, Seller grants to Climax a continuing security interest in all or any part of the goods, whether or not completed, that are identifiable to the Order. Seller expressly authorizes Climax to file any UCC financing statements and/or notify other secured parties to obtain priority over any competing security interest in the goods.

4 **Force Majeure.** Neither Climax nor Seller will be liable for a delay in performing its obligations under this Agreement to the extent that delay is

caused by insurrection, war, riot, explosion, fire, flood, earthquake, or other catastrophic event beyond the reasonable control of the affected party, provided the affected party promptly notifies the other party and takes reasonable and expedient action to resume performing its obligations under this Agreement.

5 **Nonsolicitation.** Seller 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 19.

6 **Compliance with U.S. Laws and Standards.** Seller 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 these Terms 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 goods or services. Seller 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 these Terms. Seller 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 Seller, 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 these Terms by reference. Seller 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.

7 **Notices.** All notices or other communications required or permitted under this Agreement or any Order will be given in writing and will be deemed effective upon receipt. Notices to Climax will be sent to the address shown in the Order. Notices to Seller will be sent to the Seller sales office.

8 **Governing Law: Jurisdiction: Miscellaneous.** This Agreement will be governed in all respects by the internal laws of the state of Oregon, U.S.A., without regard to choice of law provisions, and not by the 1980 U.N. Convention on Agreements for the International Sale of goods or services. All disputes arising out of or in connection with this Agreement will, at Climax's option, be resolved by binding arbitration by a single neutral arbitrator in Portland, Oregon in accordance with the rules of the Arbitration Service of Portland, Inc. Seller 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 this Agreement. The prevailing party in any arbitration or other legal proceeding will be entitled to recover its costs and expenses, including expert witness and attorney fees (including those incurred before trial, at trial and on appeal) in addition to any other costs allowed by law. "Prevailing party" means the party that prevails either affirmatively or by means of a successful defense with respect to the claims having the greatest value or importance as reasonably determined by the arbitrator or the court with jurisdiction over the matter. Seller consents to service of process by certified or registered mail at the address for Seller set forth on any Order. Seller will not subcontract or assign any obligation under this Agreement without Climax's prior written consent. If Climax agrees that Seller may subcontract any of its obligations under this Agreement,

(a) the subcontractor must agree in writing to be bound by this Agreement for the benefit of Climax; and (b) any agreement between Seller and the subcontractor must state that Climax is an intended third party beneficiary of that agreement and has the right to enforce Seller's rights against that subcontractor. Time is of the essence regarding each provision of this Agreement. All remedies set forth in this Agreement are cumulative and are in addition to any other available legal or equitable remedies. Climax may offset any amount owing to Climax by Seller against any amount payable to Seller under any Order. This Agreement will be interpreted according to the fair meaning of its terms and no rule of construction or interpretation that disfavors the party drafting this Agreement will apply. If any portion of this Agreement is found to be unenforceable, such finding will not invalidate the remaining portion. Any delay in enforcing or any failure to enforce any provision will not be deemed a waiver of such provision or any other provision. All attachments are incorporated into and made part of this Agreement. Caption headings are for convenience of reference only and will not affect the interpretation of these Terms and Conditions. The words "includes" and "including" are not limiting in any way. The word "will" is mandatory and not permissive.