

GENERAL TERMS AND CONDITIONS OF SALE

These Conditions of Sale and the accompanying proposal or production order are the sole contract items for the sale by Macrodyne Technologies Inc. ("Macrodyne") of any presses, machinery, tools, equipment, components, parts ("goods"), or services and apply to the exclusion of any inconsistent terms and conditions of the customer's order or acknowledgement. These Conditions of Sale can be altered only by a separate written agreement, signed by a duly authorized officer of Macrodyne.

1. ACCEPTANCE

Acceptance can be made by any commercially reasonable means, including the customer's issuance of an order or acceptance. Acceptance of this offer by customer is expressly limited to the terms and conditions contained herein, including those set forth on the face hereof. If customer shall use its own purchase order or other form to order goods or services from Macrodyne, such form shall be used for convenience only and shall evidence customer's unconditional agreement to the Conditions of Sale and any terms or conditions contained therein inconsistent with or in addition to those contained herein shall be of no force or effect whatsoever between the parties.

2. PRICES

- a) Prices/charges do not include any applicable taxes and are subject to payment by customer of any applicable Governmental taxes now in force or hereafter enacted, together with penalties and expenses, if any. In lieu of the payment of such taxes, customer shall provide Macrodyne with a tax exemption certificate acceptable to the taxing authorities.
- b) Unless otherwise quoted by Macrodyne, all prices are F.O.B. Macrodyne's plant located in Concord, Ontario, Canada.
- c) Macrodyne reserves the right to quote special terms for extended deliveries or for highly specialized services or goods.
- d) Goods not manufactured and services not provided by Macrodyne will be invoiced at the prices quoted in Macrodyne's proposal or production order, subject to an increase in price of any such goods or services by Macrodyne's suppliers.

3. COMPLETION - DELAYS

- a) Performance schedules and shipment dates are estimates only and are not binding on Macrodyne. Macrodyne shall have no liability to any customer or any third party for any loss, damage or expense from any failure of performance due to any cause beyond the control of Macrodyne including, but not limited to, fire, strike, accident, war conditions, government regulation or restriction, shortages in transportation, interruptions of utility services, labor or material, freight embargo, riot or civil commotion, default of a supplier or prohibitions or events which render performance difficult or impossible.
- b) If customer requests changed shipping date(s) other than the date(s) originally specified by Macrodyne, and if Macrodyne consents to the change, customer shall pay any added costs incurred by Macrodyne, including, but not limited to, overtime work, outside labor costs, storage charges and any special charges and profit.

4. COOPERATION-CANCELLATION-MODIFICATION

- a) Customer shall at all times fully cooperate with Macrodyne, and furnish all specifications, drawings or information required within a reasonable time after Macrodyne's request therefore.
- b) Customer shall not countermand or cancel the order or cause the work or shipment to be delayed or stopped, except with the consent of and upon the terms agreed to in writing by Macrodyne.
- c) Customer shall pay for all necessary costs and profit for changes required by Customer. In the event of cancellation of an order by Customer, Macrodyne in its discretion may charge and customer shall pay Macrodyne full reimbursement for all normal and customary charges, including profit.
- d) Macrodyne reserves the right, through its engineering department, to make changes in design and to modify specifications, except for design and specifications provided by Customer.

5. TERMS

All orders until shipment are subject to the approval of Macrodyne's credit department. In the event of any proceedings by or against customer, voluntary or involuntary, in bankruptcy or insolvency, or for appointment of a receiver or a trustee, or an assignee for the benefit of creditors, Macrodyne shall have the right to discontinue work on the order and receive full reimbursement for all costs incurred plus profit. If Macrodyne, in its sole discretion, in good faith, is insecure as to Customer's payment or performance, it may refuse to perform until it receives adequate assurance of Customer's payment or performance.

6. TITLE AND DELIVERY

- a) Delivery of goods to a carrier by Macrodyne at the F.O.B. shipment point shall constitute complete delivery to customer as well as transfer of title, ownership, possession and property in and to the goods to customer unless the parties otherwise agree in writing. Thereafter such carrier shall be deemed to be acting for Customer and the goods shall thereafter be at Customer's risk (including all risk of loss).
- b) Prior to shipment, Macrodyne will inspect all goods for the presence of debris or any other foreign matter, and therefore cannot be responsible for any such debris or foreign matter acquired after leaving Macrodyne's plant. Customer must inspect the goods prior to installation or use and immediately notify Macrodyne of any claimed defects.

7. INSTALLATION AND SERVICE

Unless otherwise specifically covered in Macrodyne's proposal or production order, Customer shall install the goods at its own expense. Customer shall bear any loss, damage or expense as a result of Customer's failure to inspect and test the goods delivered by Macrodyne. Once delivery has been made by Macrodyne, all servicing of any goods will be charged for in accordance with Macrodyne's Standard Field Service Rate Schedule.

8. WARRANTY - WARRANTY LIMITATION - REMEDY

The warranty/guarantee for all goods and services offered by Macrodyne is detailed in Macrodyne's New Equipment Limited Warranty, Form F301. UNDER NO CIRCUMSTANCES WILL WARRANTY COVERAGE BE PROVIDED UNLESS AND UNTIL THE FULL CONTRACT PRICE HAS BEEN RECEIVED BY MACRODYNE.

Notwithstanding any provision of these terms and conditions, the warranty as described in Macrodyne's New Equipment Limited Warranty, is the only warranty extended by Macrodyne in connection with any sale by it and the warranty is provided to Customer only and not to any successive buyers, users or third parties and is in lieu of all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose.

9. REMEDIES

Except as provided in paragraph 8, Macrodyne's obligation to Customer relating to the purchase contract, the purchase of the goods, there services performed by Macrodyne, the design manufacture or quality of the goods or their use shall be limited, at Macrodyne's election, to the repair or replacement of goods or the crediting to customer of an amount not to exceed the purchase price of the goods. IN NO EVENT SHALL MACRODYNE HAVE ANY LIABILITY WHATSOEVER FOR PAYMENT OF ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFITS. No allowance will be made for any expenses incurred by Customer in repairing defective parts or supplying any missing parts, except on the written consent of Macrodyne. In any case where Macrodyne is effecting the replacement or repair of any defective parts, Customer shall have the responsibility and bear all the costs of procuring and providing all necessary dismantling, reassembling, and handling facilities in connection therewith. Except as provided in paragraph 8, any claim made under or by reason of this agreement shall be made by written notice to general sales manager at Macrodyne, 311 Connie Crescent, Concord, Ontario, Canada L4K 5R2 within thirty (30) days after receipt of the goods.

10. CUSTOMER RESPONSIBILITY - INDEMNITY

- a) Customer assumes and shall bear sole responsibility for providing adequate and sufficient safeguards, work handling tools and safety devices necessary to provide a safe work place and to protect fully all personnel (including operators, helpers, set-up men, repair men, bystanders and all others in the vicinity of the goods) from bodily injury or death which otherwise may result from the use, operation, set-up or maintenance of the goods, including all actions required for compliance with applicable occupational health and safety legislation and their sequels and with other prevailing federal, state and local codes and industry excepted standards. Macrodyne shall bear no liability whatsoever for the failure of Customer to order, install, or use such safe guards, work handling tools or safety devices. Customer shall establish and use, train and require all persons operating the goods to use, all proper and safe operating procedures, including, but not limited to, procedures set forth in any manuals or instruction sheets whether provided by Macrodyne or other authoritative sources relating to the equipment. Customer shall not remove or modify and devices, warning signs, or manuals furnished with, installed upon or attached to the goods.
- b) With the exception of the warranty provided herein by Macrodyne, Customer for itself and its successors and assigns waives, releases and discharges Macrodyne, and its successors, agents and employees from any liability for all claims including but not limited to claims for contribution and indemnity arising out of the use or maintenance of the goods or services provided by Macrodyne.

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c) Customer shall defend, indemnify and hold harmless Macrodyne, its agents and employees from and against all claims, suits, liability, loss, settlement, judgments, damage and expense incurred by Macrodyne including, but not limited to, attorneys' and paralegals' fees and other expenses related to the defense of claims and lawsuits, trial preparation and trial by reason of or arising out of Customer's:

1) failure to equip and operate the goods in accordance with paragraph 10 a) hereof or any applicable local, state or federal law or regulation, or (2) breach of its obligations hereunder; or (3) modification or removal of any parts or component assemblies of the goods, including, but not limited to, safety devices, or of any warning signs, instructions or manuals provided with or attached to the goods by Macrodyne; or (4) failure to adequately operate, use or maintain the goods or instruct its employees on the safe operation, use and maintenance of goods; or (5) failure to retrofit any product as recommended by Macrodyne.

d) Customer shall notify Macrodyne promptly, in writing, and in all events within ten (10) business days after its occurrence of any accident or malfunction involving any goods which results in injury or death of persons, including Customer's agents and employees, or damage to property, including Customer's property, or the loss of use thereof; and customer shall cooperate fully with Macrodyne in investigating and determining the cause of any such accident or malfunction.

11. LOCAL LEGAL REQUIREMENTS

Macrodyne shall not be responsible for compliance with any local laws, ordinances, codes or the interpretation thereof, which may be in effect at Customer's plant, unless Macrodyne has specifically agreed in its proposal or production order to accept that responsibility.

12. CUSTOMER'S MATERIAL

a) When material is furnished by customer with specifications requiring heat treating, flame hardening, induction hardening, and/or carburizing and hardening, this work will be subject to reputable heat treating sources. Customer will make no claim against Macrodyne for replacement of metal nor for breakage and straightening. The liability of Macrodyne shall not exceed Macrodyne's charges for heat treating as performed by the heat treating source, plus any allowances given Macrodyne by the treating source.

b) Where there is loss or spoilage of or damage to any materials, parts or components supplied by Customer to Macrodyne, resulting from performance by Macrodyne or any subcontractor or Macrodyne, Macrodyne's liability therefore shall not exceed Macrodyne's cost for the work performed or that sale price of said material, parts or components, whichever is less.

14. APPLICABLE LAW

The sale shall be governed in all respects by the Laws of the Province of Ontario.

15. SUCCESSORS

Macrodyne's proposal, or production order and these conditions, shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

16. LIMITATION ON ACTION

Any action or suit against Macrodyne arising in any way from this contract must be commenced within one (1) year after the cause of action has occurred.

17. WHOLE AGREEMENT

All previous verbal and written communications of the parties for the sale of goods or services are abrogated. The parties agree that there are no other agreements or warranties, except as contained in these conditions of sale, and the terms and specification contained in Macrodyne's production order.

18. DELINQUENCY CHARGES

Customer shall pay a charge of two percent (2%) per month on any amounts owing Macrodyne which are more than thirty (30) days past due, except upon such delinquency charges.

19. CONFIDENTIALITY

Macrodyne and its agents and employees are under no obligation whatsoever to treat as confidential any disclosure made by customer in connection with this or other transactions with Macrodyne unless agreed to, in writing, by Macrodyne.

20. PARTIAL INVALIDITY/SEVERABILITY

Should any provision of this agreement be found unenforceable by any court of law or tribunal, the remaining portions of this agreement shall be enforceable as between the parties hereto, or their successors or assigns, as if the unenforceable provision had never been incurred.