



MERRIMAC INDUSTRIES, INC. TERMS & CONDITIONS OF SALE

1. ACCEPTANCE - (a) These terms and conditions constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all oral or written agreements and understandings, and, to the extent permissible by law, supersede all statutory provisions regarding scope and duration of Seller's warranties and the availability of remedies, with regard to such subject matter. No additions to or modifications of Seller's terms and conditions shall be binding upon Seller unless agreed to by Seller in a signed document executed by an authorized representative of Seller. (b) If a purchase order or other communication from Buyer includes any term or condition contrary to, or in addition to, the terms and conditions stated herein, Buyer's acceptance of the products and services which are the subject hereof, after receipt of notice of these terms and conditions from Seller, shall constitute Buyer's complete and unconditional assent to the terms hereof notwithstanding anything to the contrary in any such earlier purchase order or communication, unless Buyer clearly instructs Seller in writing, prior to acceptance, to cancel the order. (c) Buyer's communication of contrary or additional terms, however phrased, shall be construed as an offer to supplement and/or amend, and not as a rejection of, Seller's terms and conditions. Such offer to supplement and amend shall be deemed rejected unless accepted by Seller in the manner set forth above in the second sentence of paragraph (a).

2. PRICES AND SHIPMENT - All prices are EXW (Ex-Works) for domestic shipments and FCA (Free Carrier, named place) for international shipments. Buyer shall pay all costs of shipment and insurance. Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of the order and shall, in the absence of written agreement to the contrary, secure at its discretion the most advantageous service and rates consistent with the order. Early deliveries shall be acceptable. Any request by Buyer for a specific freight carrier must first be approved by Seller.

3. TAXES AND DUTIES - Unless separately stated, all prices are quoted, all orders accepted and all billings rendered exclusive of all federal, state and municipal taxes of any kind. Seller will not report, collect or pay any tax or duty which may be imposed on Buyer and Buyer shall report and pay all such imposed taxes.

4. PAYMENT AND TITLE - Payment terms are net thirty (30) days after the date of Seller's invoice, unless otherwise specified in Seller's offer. Interest penalty shall be assessed on unpaid invoices after 30 days, and compounded every 30 days thereafter, at an annual rate of 5%. Title to goods shall pass to Buyer at Seller's stated delivery point.

5. CHANGES - Buyer may, at any time prior to the delivery date of this order, make changes, by written order, within the general scope of this order in any one or more of the following: (a) drawings, designs or specifications where supplies to be furnished are to be specifically manufactured for the Buyer in accordance therewith; (b) method of shipping or packing; (c) time and place of delivery; or (d) customer furnished material or equipment. All changes must be agreed to in writing by the Seller prior to the effectivity of such changes. If any changes cause an increase or decrease in the cost of, or work/delivery schedule for the performance of the work under this order, an equitable adjustment in the price or schedule, or both, shall be negotiated and the order modified accordingly prior to the effectivity of such changes.

6. PRODUCT CHANGES – When the product is manufactured per Seller's design, Seller reserves the right to make changes in the design of such product, due to Buyer-initiated specification changes, without incurring any obligation to make equivalent changes in any such products previously manufactured or delivered by Seller. Buyer is responsible for all costs associated with Buyer-initiated specification changes, including but not limited to, material and documentation costs. For Seller's catalog and standard products, Seller shall maintain Material Review



Board (MRB) authority and reserves the right to make changes to parts, materials, processes, testing methods and place of manufacture without prior notice to Buyer.

7. **CUSTOMER FURNISHED MATERIAL** - Seller shall not be liable for any loss or damage from any cause whatsoever, except for gross negligence or willful misconduct on the part of the Seller, to property owned by Buyer and furnished to Seller or to other material furnished to Seller, and the risk of loss for material furnished to or left with Seller shall remain with Buyer.

8. **FIXTURES AND TOOLS** - Seller's means of manufacture, and title to fixtures and tools required for performance of this order, are property interests of Seller and shall remain as such upon completion of the order. Invoices for setups, fixtures or tools do not convey any title to Buyer, unless so specified in the order. Special tooling or special test equipment required specifically to fulfill Buyers requirements will also become Seller's property, unless specifically identified as a deliverable line item.

9. **INSPECTION AND ACCEPTANCE OF GOODS** – (a) Any inspection required as part of this order shall be limited to final inspection only, unless provisions for in-process inspections have been specifically agreed to by Buyer and Seller, and delineated in the order. In any event, such in-process inspection shall be on a non-interference basis only and subject to any applicable export control requirements. Such inspection may be at Seller's facility but shall not include any areas or processes which are proprietary to Seller. Seller may assess a standard charge for such in-process inspection. (b) Acceptance of goods shall occur within thirty (30) days after delivery to Buyer. Failure to inspect and reject nonconforming items within thirty (30) days and notify Seller of same in writing within that period shall be deemed acceptance by Buyer with full responsibility for payment.

10. **PATENT RIGHTS** - Patent rights in any inventions or discoveries made by Seller, Seller's employees or persons under Seller's control, under this order, including title to and rights under any patent application or patent which may issue thereon throughout the world, shall reside solely with Seller, together with exclusive power to determine whether or not and where a patent application shall be filled, and disposition of any rights thereunder.

11. **DATA** - Sales of goods or performance of any work under this order does not convey any rights of license to Seller's proprietary data used or developed in the course of the order. Any data required to be delivered is limited to that data expressly identified on the face of the order as a deliverable item. Deliverable data will be marked with the appropriate legend/stamp to reflect restrictions as applicable. The Seller and Buyer will enter into a Non-Disclosure Agreement (NDA) prior to exchange of proprietary data and shall not release this data to a third party, except as required for performance of this order (and then only under an NDA with such third party).

12. **GOVERNMENT CONTRACTS** - If Buyer identifies goods as being purchased for use under a U.S. Government contract, order or subcontract, only those terms and conditions made mandatory for inclusion in fixed price supply contracts by applicable federal law shall be deemed to be incorporated herein by reference. Seller agrees to be bound by the U.S. Government's rights and remedies available under the FAR (or DFARS) clauses in this order and disclaims any rights and remedies under state law.

13. **AUDITS** - Seller considers the financial information supporting the cost and pricing data, if submitted as part of this order, to be sensitive and proprietary and, therefore, not subject to audit by Buyer. Any required audits shall be performed only by authorized representatives of the Defense Contract Audit Agency, unless otherwise agreed to by Seller in writing. Cost and pricing data will only be submitted when required by FAR regulations.

14. **CONFIDENTIAL INFORMATION AND PROPERTY** - Buyer shall keep confidential, and otherwise protect from disclosure, all data and information, regardless of form, including, but not limited to, drawings, specifications, plans, samples and property obtained from Seller in connection with the order. Buyer shall not disclose any such information



relating to the order to any person not authorized by Seller. Buyer shall use the information and property supplied by Seller only in the performance of the order. Nothing contained herein shall grant Buyer any ownership in or rights to any such information or property furnished, except as otherwise specifically agreed to in writing. In the event of a conflict between the terms of this provision and a separate applicable Non-Disclosure Agreement (NDA) between Buyer and Seller, the terms of the NDA shall control.

15. **CANCELLATION** - Any cancellation of the order, in part or in whole, shall be subject to mutual agreement of the parties. If the order is a prime contract or subcontract of the U.S. Government, a termination for convenience shall only apply if the U.S. Government has issued a termination for convenience of the prime contract, including the work hereunder, (the "Buyer" herein), unless Buyer and Seller agree to do otherwise.

16. **FORCE MAJEURE** - Seller shall not be held responsible for any failure of performance or failure to make delivery of all or any part of the goods purchased under this order due to federal, state or municipal action, statute, ordinance or regulation, strike, or other labor trouble, fire damage to or destruction in whole or part of merchandise or manufacturing plant; or any other cause, act of God, contingency, or circumstances within or without the United States, which hinder the manufacture or delivery of goods.

17. **APPLICABLE LAW** - This order shall be construed and enforced in accordance with the laws of the State of Washington, without regard to its conflicts of laws rules. If the products are ordered by a non-U.S. buyer or will be shipped outside of the U.S., the U.N. Convention on the International Sales of Goods is not applicable to this order. Any proceeding arising out of or relating to this order may be brought in any court of proper jurisdiction in the State of Washington (King County), including the United States District Court for the Western District of Washington, and each party irrevocably submits to the exclusive jurisdiction of each such court in any proceeding. Any provision of this order that is (a) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or (b) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR, or (c) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted under the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal government.

18. **DISPUTES** - Any disagreements which cannot be settled through mutual agreement of the parties, within thirty (30) days of the other party's receipt of written notice of such disagreement, shall be considered a dispute and shall be subject to arbitration in accordance with the rules and regulations of the American Arbitration Association. The governing law for the arbitration shall be the laws of the State of Washington, without regard to its conflicts of laws rule. Each party in the event of a dispute shall be responsible for the fees of its legal counsel. Arbitration will take place in the State of Washington or, at Seller's option, in the state in which the order is performed. Nothing in this section shall be deemed to prohibit or restrict either party from seeking injunctive relief in a court of proper jurisdiction.

19. **INSURANCE** - If this order provides for work to be performed by Seller on property owned or controlled by Buyer: (a) Seller agrees to insure its own employees performing the work with Worker's Compensation and employee liability insurance; (b) Buyer agrees to indemnify and save Seller harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, and proceedings arising as a result of Seller's performance of the scope of work required, except to the extent that any such damage is due solely and directly to the negligence or willful misconduct of the Seller; and (c) neither party shall be subject to incidental or consequential damages.

20. **ASSIGNMENT** - This order shall not be assigned or transferred by Buyer without the prior written consent of the Seller.

21. **SELLER'S RIGHT TO TERMINATE FOR DEFAULT** - The Seller at its option, may terminate this order for default if any of the following acts of default occur: (a) Buyer's payments are in default; (b) Buyer breaches any



material provision of this order; or (c.) Buyer becomes insolvent or a petition under any bankruptcy act or similar statute is filed by or against Buyer and is not vacated within thirty (30) days after such filing. Such termination for default shall be effective upon receipt by Buyer of a written notice of termination for default issued by Seller.

22. **SUBSTITUTE PARTS** - Substitutions for unavailable component parts will be made with functionally equivalent parts of equal or higher quality obtainable. Any redesign to accommodate non-interchangeable replacements for component parts discovered to be unavailable after receipt of order is beyond the scope of the present order. Buyer and Seller agree to negotiate cost and schedule in good faith if a redesign effort is required, or mutually terminate for convenience.

23. **WARRANTY** - (a) Seller warrants that the products will be free from defects in material (excluding Buyer-supplied materials) and workmanship: (i) for a period of twelve (12) months from the date of original shipment; and (ii) for a period of thirty six (36) months from the date of original shipment for higher grade Interpoint power products (e.g. /883, /HR, /KR). This warranty shall not apply to any products which shall have been improperly stored, abused or misused physically or electrically, repaired or altered by any person other than Seller. Seller shall be liable under this warranty only if the Buyer fully complies with the procedures relating to warranty adjustments set forth below. (b) Returned products must be shipped, transportation prepaid, by the most economical method of shipment. Shipping costs will be credited on all products found subject to warranty adjustment. Excess transportation costs resulting from the use of other than the most economical carrier will not be allowed. Seller can accept no billing for packing, inspection, labor charges or other incidental costs in connection with any products returned for adjustment. In all cases, Seller shall determine in its sole discretion whether: (i) such products are defective in workmanship or material; (ii) have not been subject to accident, abuse or misuse; and (iii) have been operated and maintained in accordance with the manufacturer's recommendation and specifications. Seller's inspection of defects shall be final. Adjustment will take the form, at Seller's option, of a replacement or repair of the defective or nonconforming products. In the event that it is uneconomical to replace or repair warranted items, Seller may, at its sole option, remit the dollar equivalent or pro-rated amount based upon the original product sales price. Seller shall not be responsible for any re-inspection or rejection charges or any costs incurred by Buyer for the removal and/or reinstallation of the product. (c) **THE WARRANTIES PROVIDED IN THIS ARTICLE ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES AND LIABILITIES OR SELLER AND ALL CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN ANY GOODS, INCLUDING, WITHOUT LIMITATION, ANY (1) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE, (2) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, AND (3) RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE AND (4) ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. IN THE EVENT THAT ANY PROVISION HEREOF SHOULD FOR ANY REASON BE HELD INEFFECTIVE, THE REMAINDER OF THIS ARTICLE SHALL REMAIN IN FULL FORCE AND EFFECT.** (d) In the event of replacement pursuant to the foregoing warranty, such warranty shall apply to the replaced product. In the event of repair pursuant to the foregoing warranty, the validity of the foregoing warranty will be ninety (90) days from the date of shipment of the repaired product or the remainder of the original product warranty left at the time of the product return by the Buyer for warranty repair, whichever is longer. Such 90-day extended warranty, if applicable, shall be limited to the specific repair activity performed on that unit. A 90-day warranty shall be granted for any out-of-warranty repair done at Buyer's cost and shall be limited to the specific repair activity performed on that unit. (e) The foregoing warranty may be asserted only by the Buyer, and not by the Buyer's customer or other third parties.



24. **RETURN MATERIAL PROCEDURE** - All in and out-of-warranty repairs will require a Return Material Authorization (RMA) number assigned prior to shipment. This RMA number may be obtained by contacting Seller's designated customer service representative. Material received without this pre-assigned number will not be processed. Pursuant to the U.S. International Traffic in Arms Regulations (ITAR), international return shipments to Seller may be subject to U.S. export licenses and must identify either the designated ITAR Exemption or the export license number on the outer packing label. Licensable returns should be specially coordinated with Seller's designated customer service representative to ensure that the RMA is properly cleared through U.S. Customs. Failure to comply with all return instructions will prevent the acceptance and clearance of the shipment by Seller and shipment will be returned by public carrier at the Buyer's expense. Out-of-warranty returns will be subject to a minimum evaluation charge based upon product complexity. Out-of-warranty returns will, as a minimum, require advance funding approval for the amount of the minimum evaluation charge prior to issuance of an RMA number. Any in-warranty claims, which are determined to be non-verified, will also be subject to the minimum evaluation charge. A repair estimate will be provided upon evaluation completion and customer funding approval will be required prior to proceeding with the repair.

25. **IMPORT/EXPORT REQUIREMENTS** –Technical data provided, activities undertaken, and articles produced or shipped in support of this order may come under the purview of U.S. Export – International Traffic in Arms Regulations (ITAR) - Arms Export Control Act (Title 22, U.S.C., Sec. 2751, et seq.) CFR parts 120 -130.; the Export Administration Act of 1979, as amended, (Title 50, U.S.C., App. 2401, et seq.) or the U.S. Code of Federal Regulations C.F.R. 1- 199, U.S. Customs Service, Department of Treasury All parties to this order are responsible to ensure their compliance with applicable U.S. Import and Export regulations and to ensure that product / data shipments and exchanges are made properly within the regulations.

26. **EXPORT LICENSE** – This order may require the acquisition of a license to be issued in compliance with U.S. export regulations. In the event the license is not granted, this order, or the applicable part thereof, will be cancelled by Seller and Buyer will be responsible for costs incurred at time of cancellation.

27. **END USE** – Under certain circumstance, Seller will require that Buyer provide information on the ultimate destination of products sold to Buyer. This information includes, but is not limited to, information regarding the end use and the end user.

28. **ORDER OF PRECEDENCE** – In the event of any inconsistency or conflict between or among the provisions of this order, such inconsistency or conflict shall be resolved by the following descending order of preference: (a) Special Terms and Conditions, if any; (b) General Terms and Conditions; (c) Statement of Work; (d) other incorporated or referenced documents; and (e) Specifications attached hereto or incorporated by reference.

29. **SELLER'S LIMITATION OF LIABILITY** – SELLER'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, DEVELOPMENT, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY GOODS COVERED BY OR FURNISHED UNDER THIS ORDER SHALL IN NO CASE EXCEED THE ORDER PRICE ALLOCABLE TO THE GOODS, OR PART THEREOF, OR SERVICE WHICH GIVES RISE TO THE CLAIM. NOTWITHSTANDING ANYTHING IN THIS ORDER TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY SPECIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OF USE OF ANY PROPERTY OR CAPITAL OF BUYER OR ANY THIRD PARTY, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SELLER IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER. THESE EXCLUSIONS OF TYPES OF DAMAGES AND LIMITATION ON THE AMOUNT OF DAMAGES SHALL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY. THESE EXCLUSIONS OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL



SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THIS AGREEMENT.

30. **OBSOLESCENCE** - Seller makes no guarantee or warranty regarding future obsolescence and shall not be liable for any damages, direct, indirect or consequential, for the obsolescence of a device or component. Further Seller shall not be liable for any costs to retrofit or redesign product that is out of warranty. Where replacement of an obsolete part may be achieved with an interchangeable component part, and the cost of that interchangeable part is the same or less than the obsolete part, Seller may incorporate that part in the future manufacture or repair of Sellers component or custom device. Where the obsolete component part is NOT interchangeable and /or the obsolete component part requires any redesign to accommodate a substitute or replacement component, Seller and Buyer will negotiate a reasonable price to manufacture, qualify, test, retrofit, or repair Seller's components or custom devices. Seller shall not be liable for consequential expenses encountered in any termination, partial termination, or extension of a contract due to obsolescence.