

## MERRIMAC TERMS AND CONDITIONS OF SALE

1. Prices and Taxes. Unless otherwise specified in Merrimac Industries, Inc. ("Merrimac") Quotation, Offer or Proposal (collectively, "Quotation") or agreed in writing by Merrimac, all prices for Merrimac's products, goods, catalog parts, articles, components, equipment, reports, data, software, services or other items (collectively, "Goods") are quoted in United States Dollars, and are exclusive of all federal, state, local or foreign excise, sales, use or value added taxes, or import duties, tariffs or levies, or any other taxes, duties, charges or fees (collectively, "Taxes"). All applicable Taxes shall be paid by Buyer and appear as a separate item on Merrimac's invoice, unless Buyer provides a tax exemption certificate acceptable to Merrimac.

2. Terms of Payment. a) Unless otherwise specified in Merrimac's Quotation or agreed in writing by Merrimac, all payments by Buyer shall be made in United States Dollars and shall be due and payable in full Net 30 days from the date of Merrimac's invoice; b) all orders, purchase orders, acceptances, or other similar documents or forms issued by Buyer (collectively, "Orders") are subject to Merrimac's approval of Buyer's credit. If in Merrimac's sole opinion, Buyer's financial condition at any time does not justify the manufacture or shipment of Goods or the credit or payment terms specified herein, Merrimac reserves the right to change any credit terms at any time; c) in the event Merrimac engages an attorney to collect any amounts due or pursue any claim against Buyer or defend against any claim asserted by Buyer, Buyer agrees to pay all reasonable attorneys fees, costs of suit and litigation expenses incurred by Merrimac if Merrimac prevails with respect to such collection or any such claim; d) Buyer shall not setoff or deduct any monies due Merrimac under any Orders; and e) Buyer's payments of Merrimac's invoices shall not be delayed or conditioned on Buyer's inspection or acceptance of Goods, or approval or payment by Buyer's customer or any third party.

3. Delivery, Title and Risk of Loss. a) All Goods are quoted, sold and delivered F.O.B. Merrimac's facility; b) all delivery dates are conditioned on Merrimac's timely receipt of any required Buyer or Buyer-furnished property. Merrimac shall endeavor to meet all agreed upon delivery dates, but shall not be liable for any direct, indirect, incidental, consequential, special or other type of damages that may result from any failure to meet any delivery dates; c) Buyer shall be responsible for selecting a carrier and paying all transportation and insurance costs. Unless specific shipping instructions are received from Buyer at least seven days prior to the delivery date, Merrimac reserves the right, but is not obligated, to procure such transportation and/or insurance at Buyer's sole expense. In such event all such transportation and/or insurance costs shall be added to Merrimac's invoice and paid by Buyer; d) title and risk of loss or damage to the Goods shall pass from Merrimac to Buyer when the Goods are delivered to a carrier for shipment F.O.B. Merrimac's facility. In the event of any loss or damage to Goods after shipment, Buyer shall not be relieved from any obligation under any Order; and e) Merrimac reserves the right to make partial shipments, or ship in advance of the delivery date, and invoice Buyer accordingly, upon mutual agreement with the Buyer. Such shipments and invoices shall be governed and payable in accordance with the terms and conditions contained herein.

4. Force Majeure. Merrimac shall not be in default in the performance of any Order if any delay in delivery or failure to perform is caused in whole or in part by any causes beyond its reasonable control, including without limitation any acts of God, the public enemy, terrorism, riots or war; acts or omissions of Buyer; fires, floods, earthquakes, epidemics, embargoes, severe weather or natural disasters; labor actions, slowdowns or strikes; accidents; inability to obtain, delays in obtaining, or shortages of, any materials, labor, fuel, electric power, water or other supplies; lack

of or delays in obtaining any transportation services; delays or defaults of suppliers; delays or failure to procure or suspension or revocation of any export, import or other license, permit, approval or authorization deemed necessary by Merrimac; any orders, priorities or other acts, or any laws or regulations, imposed by any civil or military governmental authority in either its sovereign or contractual capacity; or any other causes beyond the reasonable control of Merrimac. In such event the time for performance shall be extended for the period of such force majeure.

5. Changes, Amendments or Termination. Buyer shall not make any changes in any Order with respect to the scope of work, specifications, delivery schedules, quantities or otherwise, or amend, modify, terminate or cancel any Order, unless such action is accepted in writing in Merrimac's sole discretion, and only upon Buyer's payment of applicable charges or adjustments as determined by Merrimac. In such event Merrimac may in its sole discretion revise the prices, delivery schedules, and/or other terms accordingly. Notwithstanding the foregoing, if any Order is issued to Merrimac under a U.S. Government prime contract or subcontract and such prime contract or subcontract is terminated for convenience by the U.S. Government pursuant to the applicable Federal Acquisition Regulations ("FAR"), then the applicable FAR subcontract termination for convenience clauses shall apply in lieu of this section to the extent (i) Buyer's customer terminates its order with Buyer for convenience, and (ii) Buyer is required to terminate its Order with Merrimac for convenience.

6. Acceptance of Goods. Buyer shall inspect and accept or reject all Goods within sixty days after Merrimac's delivery of the Goods F.O.B. Merrimac's facility. If Buyer requests a Buyer or government source inspection, such inspection may result in delivery schedule delays and Merrimac may impose an additional charge based on the scope of such source inspection. In the event any nonconforming Goods are rejected, Buyer shall provide written notice to Merrimac within such sixty day period and obtain a Return Material Authorization ("RMA") from Merrimac prior to shipment. Buyer's return shipment shall be prepaid and comply with such RMA. Upon receipt of any return shipment, Merrimac shall inspect such Goods. If the Goods are nonconforming, Merrimac shall at its sole option rework or replace any nonconforming Goods within a reasonable period of time and redeliver such Goods to Buyer at Merrimac's expense. If the Goods are conforming, Merrimac shall invoice Buyer for an evaluation charge and redeliver such Goods to Buyer at Buyer's expense. No Goods may be returned to Merrimac for credit if the delivery has been made in accordance with the Order. If Buyer does not give any notice of rejection or shortages within such sixty day period, the Goods shall be deemed accepted and Buyer shall waive any claim for any nonconformances or shortages.

7. Equipment, Materials and Information.

A. Unless otherwise specified in Merrimac's Quotation or agreed in writing by Merrimac, all equipment, dies, patterns, jigs, fixtures, tools, designs, drawings, specifications, technical documents, information, data, software, techniques, procedures and all other items or materials (collectively, "Materials") which are utilized, acquired, procured, developed, generated or produced by Merrimac in connection with any Order shall remain the sole and exclusive property of Merrimac regardless of whether any charges are made by Merrimac for such Materials.

B. In connection with any Order, Merrimac may disclose or Buyer may have access to Merrimac's confidential, proprietary, technical or financial information or trade secrets (collectively, "Confidential Information"). Such Confidential Information shall include without limitation Merrimac's designs, drawings, specifications, processes, formulae, procedures, techniques, know-how, data, software, inventions or other intellectual property. In such event

Buyer shall hold the Confidential Information in strict confidence, not use or copy the Confidential Information except in connection with the Order, and not disclose, directly or indirectly, the Confidential Information to any other person or entity without the prior written consent of Merrimac, except for: (i) information which at the time of disclosure is in the public domain; (ii) information which after disclosure becomes public knowledge other than through acts of Buyer; (iii) information which Buyer can demonstrate was already in its possession at the time it was disclosed and was not acquired, directly or indirectly, from Merrimac; or (iv) information which was lawfully furnished or disclosed to Buyer by a third party. Buyer shall use its best efforts to prevent any improper use, copy or disclosure of any Confidential Information. Buyer shall immediately notify Merrimac of any unauthorized use, copy or disclosure and immediately take all corrective actions to prevent any further unauthorized use, copy or disclosure. Buyer shall have the burden of proving any exclusion under this subparagraph.

C. Unless otherwise expressly agreed in writing by Merrimac (i) all intellectual property conceived, made, developed, created, generated or reduced to practice in connection with or under any Order shall be retained by and remain the sole and exclusive property of Merrimac regardless of whether any charges are made by Merrimac for such intellectual property, and (ii) no intellectual property rights shall be transferred, conveyed or granted by Merrimac in connection with or under any Order.

D. Buyer acknowledges that a breach of any of its obligations under this paragraph will cause immediate and irreparable injury to Merrimac for which a remedy at law or monetary damages will be inadequate. In the event of any such actual or threatened breach, Buyer agrees that Merrimac shall be entitled to temporary, preliminary and/or permanent injunctive relief: (i) restraining such breach, (ii) requiring Buyer to comply with its obligations under this paragraph, or (iii) granting an appropriate decree of specific performance. Such injunctive relief shall be granted without the necessity of (iv) showing actual damages or that monetary damages will not afford an adequate remedy at law, or (v) posting any bond or security.

#### 8. Patents, Trademarks and Copyrights

A. Merrimac warrants that all Goods regularly manufactured and sold by Merrimac [excluding Goods manufactured to Buyer's specifications, special orders, developmental devices, or the like (collectively, "Special Orders")] shall be delivered to Buyer free of the rightful claim of any third person for infringement of any United States patent, trademark or copyright. This warranty is non-transferable and extends to Buyer only.

B. Merrimac expressly disclaims all warranties: (i) as to any patents, trademarks or copyrights registered in any jurisdiction other than the United States; and (ii) that any Goods manufactured pursuant to any Special Orders will be delivered to Buyer free of the rightful claim of any third party for patent, trademark or copyright infringement. In no event shall Merrimac be liable for patent, trademark or copyright infringement resulting from any unusual or non-contemplated application or use of the Goods or parts thereof by Buyer or others.

C. In the event Buyer issues any Order for any Goods manufactured pursuant to any Special Orders, Buyer expressly acknowledges that Merrimac makes no representations or warranties with respect to any patent, trademark or copyright infringement of the rights of any third parties. In such event Buyer agrees to indemnify, defend and hold Merrimac harmless from any and all claims, suits, judgments, liabilities, damages, losses, costs or expenses (including without limitation reasonable attorneys fees, costs of suit, and costs of investigating and litigating claims) occasioned by or resulting, directly or indirectly, from the manufacture, use or sale of such Goods, and to promptly assume the defense of any such claim or suit against Buyer or Merrimac.

D. The sale of Goods by Merrimac shall not grant or convey any license or other rights (whether expressly, by implication, estoppel or otherwise) under any intellectual property rights of Merrimac or any other person or entity.

E. In the event of any patent, trademark or copyright infringement claim or suit for which Merrimac is liable under this paragraph, Buyer shall immediately notify Merrimac of such claim or suit and offer Merrimac the full and exclusive control of the defense of such claim or suit. In such event Merrimac shall be responsible for the defense or settlement of such claim or suit or payment of any final award against Buyer by a court of competent jurisdiction. Merrimac may also settle such claim or suit by obtaining a license or other right to manufacture, sell or use the Goods, or by modifying or replacing the Goods with non-infringing goods. Buyer shall accept any such settlement by Merrimac.

F. This paragraph is in lieu of, and Merrimac expressly disclaims, all other warranties, express, implied or statutory, with respect to any patent, trademark or copyright infringement or other intellectual property claims.

9. Insolvency. In the event a) Buyer makes any assignment for the benefit of its creditors; b) a voluntary or involuntary petition, complaint or proceeding is filed or commenced by or against Buyer under any federal, state or foreign bankruptcy, insolvency, receivership, arrangement, reorganization or similar laws; c) Buyer becomes insolvent, or admits in writing its inability to pay its debts as they mature, or ceases to function as a going concern or conduct its operations in the normal course of business, or allows any of its assets to be attached; or d) a trustee, receiver or liquidator is appointed for Buyer's business, then Merrimac may in its sole discretion (i) immediately terminate all further work on any or all of Buyer's Orders and charge Buyer for its termination costs, including lost profit on such Orders; (ii) cancel any or all of Buyer's unfilled Orders without liability; (iii) require immediate payment for all Goods delivered; (iv) require full or partial payment in advance for all Goods not delivered, or (v) exercise any combination of the foregoing rights and remedies.

#### 10. Warranty.

A. Merrimac warrants that all Goods manufactured and sold by Merrimac under any Order shall be free of defects in material and workmanship under normal use and service for a period of one year from the date of shipment from Merrimac's facility. This warranty ("Warranty") is non-transferable and extends to Buyer only.

B. This Warranty is valid only if and when (i) Merrimac receives written notice within thirty days after Buyer's discovery of any breach of this Warranty, and in no event later than the expiration of the Warranty period, (ii) the nonconforming Goods are properly packed and returned by Buyer to Merrimac with transportation and insurance prepaid, and (iii) Merrimac determines that the Goods are nonconforming within the terms of this Warranty. Merrimac shall have no liability under this Warranty for any damages to the Goods outside of its control, including but not limited to any (i) physical damage, misuse, abuse, tampering, neglect, negligence or accident, (ii) improper storage, packaging, handling, installation, operation, use or maintenance, (iii) repair, modification or alteration unless prior written authorization has been granted by Merrimac, or (iv) failure to comply with Merrimac's operating instructions, user error, or any use or operation outside of Merrimac's specifications. Merrimac's sole and exclusive obligation and liability under this Warranty shall be limited to (i) the rework or replacement in Merrimac's sole discretion of any nonconforming Goods, and return of the Goods to Buyer's facility with transportation and insurance prepaid, or (ii) grant of a credit to Buyer if mutually agreed upon. Any Goods returned to Buyer hereunder shall be subject to the Warranty for the unexpired portion of the original Warranty period. Merrimac reserves the

right to replace catalog Goods with other Goods of equal or better performance in Merrimac's sole opinion although the replacement Goods may not be identical in all respects to the original Goods.

C. Except as expressly set forth in this Warranty, Merrimac disclaims all oral or written warranties, certifications, representations, statements, assurances, promises or agreements, express, implied or statutory, including without limitation the implied warranties of merchantability or fitness for a particular purpose. Unless otherwise specified in Merrimac's Quotation, Merrimac also disclaims that the Goods (i) will comply with any performance, design or other specifications or requirements; (ii) will be fit, suitable or merchantable for any purpose, application or environment; or (iii) will comply with or meet any quality, capacity, capability, construction or other standards or requirements. Merrimac shall not be liable for compliance with any part of Buyer's specifications or other requirements to which Merrimac has set forth any exceptions.

#### 11. Limitation of Liability.

A. In the event of any breach by Merrimac of the Terms And Conditions Of Sale herein or any provision of any Quotation or Order, or in the event of any termination by Buyer of any Order for any reason, Merrimac shall not be liable in contract, warranty, tort, negligence, strict liability or otherwise for any consequential, incidental, indirect, special, punitive or other similar damages, including without limitation any personal injury, death or property damages, or any loss of use of any property, or any delay or disruption damages, or any loss of profits, revenues or business, or any liability of Buyer to its customers or third parties, or any costs associated with any investigation, retrieval, disassembly, reassembly, reinspection or retesting of any Goods.

B. The rights and remedies of Buyer as set forth in Merrimac's Terms And Conditions Of Sale herein are exclusive. In no event shall Merrimac's maximum liability for (i) any breach of the Terms And Conditions Of Sale herein or any provision of any Quotation or Order, or (ii) any termination of any Order for any reason, exceed the price of such Quotation or Order or the price actually paid by Buyer, whichever is less. All liabilities of Merrimac to Buyer shall terminate upon the expiration of the applicable warranty period as set forth herein.

12. Indemnity. Buyer shall indemnify, defend and hold Merrimac harmless from and against any and all claims, demands, actions, suits, liabilities, judgments, damages, losses, costs and expenses, including without limitation reasonable attorneys fees, costs of suit and litigation expenses, arising out of Buyer's breach of any of the Terms And Conditions Of Sale herein or any provision of any Order or any acts or omissions of Buyer. Buyer shall carry and maintain adequate liability insurance to cover its indemnification obligations under any Order.

13. U.S. Government Contracts. Unless otherwise specified in Merrimac's Quotation, in the event any Order is issued to Merrimac under a U.S. Government prime contract or subcontract and a U.S. Government contract number is set forth in Buyer's Order, Merrimac agrees to comply with the U.S. Government procurement clauses which are (i) expressly required by law or regulation to apply and be flowed down to Merrimac, (ii) expressly set forth in Buyer's customer's order issued to Buyer, and (iii) expressly set forth in Buyer's Order issued to Merrimac.

14. General Conditions. a) All Quotations and Orders, and all modifications or amendments thereof, will only be enforceable against Merrimac if executed by an authorized representative of Merrimac's Sales Department. No modification, amendment, change, alteration, addition, deletion, or waiver of any Terms And Conditions Of Sale herein or any provision of any Quotation or Order shall be binding on Merrimac unless set forth in writing and signed by an authorized representative of Merrimac's Sales Department; b) no delay or omission by Merrimac

in exercising any rights or remedies under any Order shall operate as a waiver of such right or remedy or any other right or remedy. No waiver by Merrimac of any breach under any Order shall be deemed a waiver of any other or subsequent breach; c) if any Terms And Conditions Of Sale herein or any provision of any Quotation or Order is determined by a court of competent jurisdiction to be invalid, unenforceable or void for any reason, then such term, condition or provision shall be deemed deleted and the remaining terms, conditions or provisions thereof shall continue in full force and effect; d) notwithstanding anything to the contrary contained herein, Merrimac shall have no liability for any breach of any Quotation or Order if Merrimac's or Buyer's specifications require a breakthrough in the state-of-the-art; e) in the event any Quotation or Order involves the sale of research or development services, or special or developmental devices, or the like, Merrimac's sole and exclusive obligations are limited to using commercially reasonable efforts to (i) achieve the agreed upon objectives, and (ii) design and manufacture the Goods to conform to Buyer's specifications; f) Merrimac is not obligated to perform any term, condition or provision of any Quotation or Order if such performance may, in the sole opinion of Merrimac's legal counsel, violate any governmental law, rule or regulation (domestic or foreign), and Merrimac shall not be liable for damages or otherwise as a result of such non-performance; g) Merrimac reserves the right to make changes in the design or to upgrade or improve the Goods it manufactures at any time without incurring any obligation to install such changes, upgrades or improvements in any Goods previously shipped; h) the Terms And Conditions Of Sale herein represent the entire understanding of the parties with respect to the subject matter hereof and supersede and take precedence over any and all prior oral or written writings, representations, negotiations, agreements or understandings; i) unless otherwise agreed in writing by Merrimac, Merrimac's delivery of the Goods to Buyer is expressly contingent upon Buyer's obtaining any required governmental export or import license, permit, approval or authorization to the satisfaction of Merrimac; j) Buyer shall strictly comply with all applicable federal, state, local and foreign laws and regulations, including without limitation all domestic and foreign security and export and import laws; k) Buyer shall not transfer or assign in whole or in part any Order or any rights, interests or duties hereunder without the prior written consent of Merrimac; l) all rights and remedies of Merrimac under the Terms And Conditions Of Sale herein, any Quotation or Order, and at law or equity shall be deemed to be cumulative; m) all notices required or permitted to be given under any Order shall be in writing and shall be deemed to have been properly given if delivered by hand, or by certified mail, return receipt requested, with postage prepaid, addressed to the party at the address set forth in the Order; n) all obligations and duties herein which by their nature extend beyond the completion or termination of any Order shall not cease, but shall survive and remain in full force and effect in accordance with the terms and conditions thereof; and o) all Terms And Conditions Of Sale herein, Quotations and Orders shall be binding upon the parties hereto and their respective legal representatives, successors and assigns.

15. Governing Law and Jurisdiction. All Quotations, Orders and Acknowledgments shall be governed, interpreted and construed in all respects in accordance with the laws of the State of New Jersey without giving effect to any conflict-of-laws rules. All Orders shall be deemed to be entered into in the State of New Jersey. Except for injunctive relief sought by Merrimac, any action to enforce, or which arises out of, or in any manner relates to, Merrimac's Quotation, Buyer's Order, or Merrimac's Acknowledgment shall be brought exclusively in the federal or state courts of Essex County, New Jersey. Buyer waives its right to a trial by jury, and Merrimac and Buyer expressly consent, unconditionally and irrevocably, to the exclusive jurisdiction of such New Jersey courts, and to service of process by certified mail, return receipt requested, or by any other manner provided by the laws of the State of New Jersey.

16. Applicable Terms and Conditions of Sale. a) Merrimac's Terms And Conditions Of Sale only shall apply to all of Merrimac's Quotations, Buyer's Orders, and Merrimac's Acknowledgments of Orders, if any. Notwithstanding anything contained in Buyer's Orders to the contrary (i) Merrimac's Quotations are expressly made conditional on Buyer's acceptance of Merrimac's Terms And Conditions Of Sale only, and (ii) Merrimac's Quotations expressly limit Buyer's acceptance to Merrimac's Terms And Conditions Of Sale only. All terms and conditions set forth in Buyer's Orders which are additional to, different from, inconsistent or in conflict with (collectively, "Additional Terms") Merrimac's Terms And Conditions Of Sale herein shall not apply, have no force or effect, and not become a part of any Orders. Merrimac hereby notifies Buyer of its objections in advance to all of Buyer's Additional Terms contained in Buyer's Orders. Neither Merrimac's failure to object to Buyer's Additional Terms, nor Merrimac's commencement of performance or manufacture or shipment of any Goods, shall be deemed an acceptance of Buyer's Additional Terms; b) Merrimac's Terms And Conditions Of Sale only shall be deemed accepted by Buyer if Buyer issues any confirmations, acceptances or Orders to Merrimac which substantially agree with Merrimac's Quotations as to quantity, description and price of the Goods. Such Buyer confirmations, acceptances or Orders shall be deemed an acceptance of all of Merrimac's Terms And Conditions Of Sale only and not a counteroffer, regardless of whether it contains any of Buyer's Additional Terms. Buyer shall also be deemed to have accepted all of Merrimac's Terms And Conditions Of Sale only, upon Buyer's acceptance, payment or use of the Goods described in any Quotations; c) in the event Merrimac's Terms And Conditions Of Sale herein are not set forth at length in or attached to Merrimac's Quotations as part of the quotation process, but instead are cited by reference to Merrimac's website or incorporated by reference in Merrimac's Quotations, then these Terms And Conditions Of Sale only shall be deemed accepted by Buyer and become part of any Orders as if set forth at length in Merrimac's Quotations. Any Acknowledgments issued by Merrimac on either Merrimac's or Buyer's forms shall be deemed issued for administrative purposes only. Such Acknowledgments shall neither affect Buyer's acceptance of Merrimac's Quotations and Merrimac's Terms And Conditions Of Sale only, nor constitute an acceptance of Buyer's Additional Terms.

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