

**MIL-RAM TECHNOLOGY, INC.**  
**TERMS AND CONDITIONS**

**Version February 2017**

**1. Definitions.**

“Buyer” means the business or person who buys or agrees to buy products or services from Seller.

“Sales Contract” means the binding agreement between Seller and Buyer for the sale of products or services by Seller to Buyer. The Sales Contract usually consists of (i) Seller’s written quote/offer and (ii) Buyer’s written purchase order/acceptance of that quote/offer.

“Seller” means Mil-Ram Technology, Inc. a California corporation with its principal place of business located in Fremont, California, USA.

“Terms and Conditions” means these terms and conditions.

- 2. Application.** These Terms and Conditions apply to all (i) Seller quotations and offers for sale of Seller products and services; (ii) Buyer purchase orders for Seller products and services; (iii) Seller acknowledgements of Buyer’s purchase orders for Seller products and services; (iv) any other sales of products and services by Seller to Buyer; and (v) Sales Contracts. A quote by Seller to Buyer shall be deemed Seller’s offer to provide products or services to Buyer and Buyer’s purchase order shall be deemed Buyer’s acceptance of Seller’s offer. Any terms in Buyer’s purchase order that modify, add to, or delete any terms of Seller’s offer are not agreed to and do not become part of the Sales Contract.
- 3. Modifications.** For any given Sales Contract, these Terms and Conditions may be modified only as follows: the modification, addition to, or deletion of any of these Terms and Conditions is expressly stated and Seller expressly agrees in writing to accept such modification, addition, or deletion. To be effective, any such modification, addition, or deletion must be stated within Seller’s quote/offer applicable to the Sales Contract. Any terms and conditions that modify, add to, or delete any of these Terms and Conditions which are not agreed by Seller in the manner described above are not accepted by Seller and do not become part of the terms of any Sales Contract.
- 4. Seller Prices.** All Seller prices are in U.S. dollars. Unless stated otherwise in Seller’s quote/offer, Seller’s quote/offer shall be valid for 60 days from the date on Seller’s quote/offer.
- 5. Taxes.** The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with a valid resale certificate. Any taxes which Seller is required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand.

6. **FOB Point and Shipment.** FOB point is Seller's facility in Fremont, California, USA. Buyer agrees to take title to the purchased products when the purchased products are either picked up by Buyer at Seller's Fremont, CA facility or handed off to Buyer's specified courier at Seller's shipping dock in Fremont, CA. Buyer shall be responsible for (i) naming the courier service and method of shipment from Seller's Fremont, CA facility to the Buyer's specified shipment destination address; (ii) paying all shipping charges and fees associated with the shipment from Fremont, CA to Buyer's specified shipment destination address; (iii) any and all damage incurred during shipment from Seller's facility to the shipment destination address; and (iv) choosing to insure or not insure shipment against damage or loss. Buyer is to file any and all claims with the courier for loss or damage occurring during shipment.
7. **Payment.** Payment terms are as specifically stated in Seller's written quote/offer. Buyer agrees to pay Seller's invoice amount, in U.S. dollars, in accordance with Seller's payment terms. Unless stated otherwise in Seller's quote/offer, if Buyer pays Seller's invoice amount by wire transfer, Buyer agrees to pay a \$35 wire transfer fee.
8. **Warranty; Exclusive Remedy; Limitation of Liability.** Seller products are warranted against defects in material and workmanship for a period of twelve months from the date of shipment, provided it is maintained and used in compliance with Seller's written instructions and written recommendations. If Seller receives notice of such defects during the warranty period, Seller will investigate the matter. In determining whether a defect exists, Seller will take into account whether the product was properly used. If Seller's investigation determines there is a defect in material or workmanship, Seller will, at its sole option, either repair or replace the product at no cost to Buyer. This warranty extends only to Buyers purchasing Seller-branded products and services directly from Seller or from an authorized distributor of Seller.

This warranty shall become void and Seller will have no obligations under this warranty if (i) repairs or modifications are made by persons other than Seller or Seller's authorized service personnel, or (ii) the warranty claim results from physical abuse or misuse of the product.

This warranty does not apply to expendable or consumable parts whose normal life expectancy is less than one year such as, but not limited to, non-rechargeable batteries, sensor elements, filter, lamps, and fuses. Seller makes no warranty concerning components or accessories not manufactured by Seller, but will pass on to the Buyer all warranties of manufacturers of such components.

**Seller disclaims all other warranties, whether expressed, implied, statutory, or otherwise. Seller specifically disclaims the implied warranties of merchantability and fitness for a particular purpose. The remedies provided herein are Buyer's sole and exclusive remedies. Seller will not be liable for direct, indirect, special, incidental, or consequential damages whether based on contract, tort, or other legal theory.**

9. **Delivery.** Seller will make a good faith effort to complete delivery of the products as indicated in Seller's written quote/offer, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage

was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

10. **Recommendations by Seller.** Seller frequently provides to its customers and publishes on its website Gas Detector Placement Guidelines, attached hereto as Exhibit A, and Gas Detector Calibration Practices, attached hereto as Exhibit B.

Notwithstanding anything to the contrary in these Guidelines and Practices, and except as expressly provided otherwise in Section 8 above (Warranty), Buyer acknowledges that Seller does not make and specifically disclaims any representations, warranties and guaranties of any kind or character, expressed or implied, regarding (i) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose; (ii) the maintenance or other expenses to be incurred in connection with the products; (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller or its agents, suppliers and employees; or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Buyer shall not impose any liability upon Seller.

Furthermore, the Buyer shall accept complete and total responsibility for verifying, validating and determining if Seller's product and Seller's product performance is suitable for the end use application of the Buyer or the Buyer's customer, as applicable, including but not limited to the product's survivability and reliability in the end use environment.

11. **Entire Agreement.** These Terms and Conditions, along with the accompanying quote/offer by Seller and the purchase order/acceptance by Buyer (to the extent such purchase order/acceptance is compliant with these Terms and Conditions), constitute the entire, complete, and exclusive agreement between the parties regarding the subject matter hereof.
12. **Severability.** If any provision of these Terms and Conditions is held to be unenforceable, then (i) such provision shall be modified to the minimum extent necessary to make it enforceable, and (ii) the validity and enforceability of all the other provisions of these Terms and Conditions shall not be affected thereby and shall be construed so as to give effect to the maximum extent possible to the intent manifested by the provision held unenforceable.
13. **Waivers.** If either party fails to require the other party to perform any term of these Terms and Conditions or the Sales Contract, that failure does not prevent that party from later enforcing that

term. If either party waives the other party's breach of such a term, that waiver is not treated as waiving a later breach of that term.

14. **Construction.** If any ambiguity or question of intent or interpretation arises, these Terms and Conditions shall be construed as if drafted jointly by Seller and Buyer and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of these Terms and Conditions.
15. **Governing Law.** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California, USA, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.
16. **Jurisdiction; Venue.** Any actions arising from or relating to these Terms and Conditions shall be brought in a state court having jurisdiction in either Alameda County or Santa Clara County located in California, USA and the parties agree and consent to submit to the exclusive jurisdiction of such courts and waive any objection to venue laid therein.

## Exhibit A

### Gas Detector Placement Guidelines

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Mil-Ram Technology gas detection systems monitor specified gases within the designated range of concentration. The properly maintained gas sensor is only capable of monitoring gas that is immediately present at the face of the sensor. The installation instructions and other recommendations offered by Mil-Ram are intended to provide basic guidance related to the operation of the equipment and potential effects related to environment. While this information may be useful in determining the number and placement of gas detectors, it should not be relied upon as the only source. It is recommended that the user consult with qualified safety professionals (e.g. industrial hygiene, environmental, etc.) to determine adequate number and placement of gas detectors for a given site and prevailing conditions. Industrial sites are often complex in nature and therefore, require proper analysis to make the best determination.

The following general guidelines are offered:

Regarding gas detector placement, a general guideline is to place detectors as close as possible to potential leak sources (valves, flanges, regulators, gaskets, compression fittings, etc) to provide early warning and acknowledgement of leak conditions. Additionally, it is recommended to install detectors moving away from the potential leak source, to track the movement of the gas and especially provide earliest possible warning approaching and including areas where workers may be present. For example, gas detector placement should include all populated areas, confined spaces, tunnels, adjacent structures and buildings. Detector placement is especially critical in safety related applications where personnel may be present. Other factors that influence detector placement include convection currents, ventilation, personnel traffic, location of machinery & equipment, gas vapor density, etc. Qualified, on-site safety personnel that are most familiar with the specific environment and related processes under varying conditions, over extended periods of time, are often critical to determining the number and placement of gas detectors. Mil-Ram can only offer general guidelines as a starting point for consideration. The final determination regarding the number and placement of gas detectors must be made by the end user and take into account their own unique site, operational and safety requirements and company policies. Safety critical applications require the most careful attention.

## **Exhibit B**

### **Gas Detector Calibration Practices**

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Mil-Ram Technology provides gas detection equipment for many applications in numerous industries under a wide variety of operating conditions. Specific knowledge of each application and environment is not possible so we are conservative in our recommendations in the interest of safety. Calibration recommendations are noted in specific Operating Manuals.

Please consider the following factors in establishing appropriate calibration practices that best serve your application requirements:

Industrial gas detectors of all types, regardless of sensor technology, require regular and routine calibration using certified gas standards. Actual field calibration with gas of known concentration is the most reliable method of validating proper operation and performance of the device. In safety related applications, calibration maintenance is especially critical. Factors influencing stability of gas sensors are largely related to environmental conditions where detectors installed under more hostile operating conditions (temperature, weather, gas exposure, contaminants, etc.) typically require more frequent calibration maintenance. In addition to any applicable company policies, agency regulations, etc. dictating calibration frequency, calibration practices should be further influenced by actual performance history of the equipment under actual operating conditions at specific locations. For example, it is possible in an installation to have one or more detectors that are installed under more hostile conditions where sensors necessarily require more frequent calibration maintenance and possible replacement. Gas sensors typically reflect the conditions of the immediate environment in which they are installed. Calibration frequency is best informed by qualified, on-site plant personnel that have intimate knowledge of the specific operating conditions over time, related characteristics of the target gas, company policies, regulations, application and intended purpose of the equipment (e.g. safety, process, etc.) as well as any previous experience with the equipment. It is further recommended that the user consult with qualified safety professionals (e.g. industrial hygienist) to develop and maintain good calibration practices. Safety critical applications require the most attention.

Consider these factors and any other factors deemed critical to the application in establishing effective and responsible calibration practices.