



## Global Terms and Conditions of Sale

Last Updated October 20, 2022

- 1. Definitions.** The term "Seller" as used herein shall refer to Yield Engineering Systems, Inc., a California corporation. The term "Buyer" as used herein shall refer to the customer designated on the Seller's sales quote ("Quote"). The terms "Product" or "Products" refer to the goods or services sold by Seller described on a Seller Quote. Buyer acknowledges that it has reviewed and agrees to be bound by the following terms and conditions (these "Terms") with respect to any Products or Services purchased from Seller. The term "Agreement" means these Terms, the Quote and any confirmation of sale or invoice issued by Seller to Buyer.
- 2. Product and Sales Terms.** Buyer accepts the Terms by sending a purchase order in response to the Quote or by Buyer's instructions to Seller to ship the Product. No terms, conditions or warranties other than those identified in the Quote and no agreement or understanding, oral or written, in any way purporting to modify these Terms whether contained in Buyer's purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless thereafter made in writing and signed by Seller's authorized representative. Buyer is hereby notified of Seller's express rejection of any terms inconsistent with these Terms that are proposed by Buyer in accepting Seller's Quote. Neither Seller's subsequent lack of objection to any terms, nor the delivery of the Products shall constitute an agreement or acceptance by Seller to any terms proposed by Buyer that are inconsistent with these Terms or Quote. Acceptance by Buyer of delivery of the Products shall constitute an unqualified acceptance of these Terms.
- 3. Shipping & Delivery.** Seller will decide, at its discretion, the applicable shipping, title transfer, and delivery terms based on the where the Products will be delivered to (the "Delivery Location"). The Products will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of Products. Delivery dates and Product quantity availability, as described in the Quote, are estimates only. Seller will make reasonable efforts to deliver Products in accordance with the dates communicated to Buyer, however, Seller is not liable for any failure to deliver where or when estimated. If Seller experiences a Product shortage, Seller may hold or allocate Products among its customers, as Seller considers appropriate. Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise agreed in writing by the parties, Seller shall deliver the Products EXW (Incoterms® 2010) to the Delivery Location using Seller's standard methods for packaging such Products. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. Shipment of Products may originate from Seller or from its authorized subcontractors or suppliers.
- 4. Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Products to the Delivery Location. Any loss or damage to any Products thereafter shall not relieve Buyer from any obligation (payment or otherwise) hereunder. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the

right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code, and Seller may file a financing statement in any applicable jurisdiction identifying Buyer as debtor and the Products as collateral

- 5. Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.
- 6. Inspection and Rejection of Nonconforming Products.** Buyer shall inspect the Products within ten (10) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Products" means only the following: (i) the product shipped is different than identified in the Quote; or (ii) the product's label or packaging incorrectly identifies its contents. If Buyer notifies Seller of any Nonconforming Products prior to the expiration of the Inspection Period, Seller shall replace such Nonconforming Products with conforming Products. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Seller's facility located at Fremont, California, USA. Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products to the Delivery Location. Buyer acknowledges and agrees that the remedies set forth in this Section 6 are Buyer's exclusive remedies for the delivery of Nonconforming Products. Except as provided under this Section 6, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased from Seller without the express written consent of Seller.
- 7. Price.** Buyer shall purchase the Products from Seller at the price (the "Price") set forth in the Quote. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- 8. Payment Terms.** Seller may invoice Buyer for the Price of the Products on or at any time after the date Seller ships the Products. Unless otherwise agreed to in writing signed by Seller, Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire, ACH or check and in US dollars. Buyer shall pay interest on any overdue unpaid balance up to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by applicable law. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
- 9. Postponement or Cancellation.** Buyer shall be subject to cancellation, expedite or change order fees for any changes made to an accepted order requested within ninety (90) U.S. working days of the

scheduled shipment date. Cancellation charges will be calculated as shown below in the “Order Cancellation Charge” table. If Buyer requests a shipment delay, Seller may treat such postponement request as a request for cancellation and Buyer shall pay to Seller the applicable Order Cancellation Charge. Seller may offset the Order Cancellation Charges using previously made payments. Seller is entitled to an extension in Seller’s time to perform, if Seller’s ability to achieve Final Acceptance of an item of Equipment is delayed for any reasons due to Buyer, including without limitation, the condition, availability and/or facilitation of Buyer’s Site.

Order Cancellation Charge

Days between cancellation and shipment date:	Cancellation Charge
≥90 days	35% of the Price
31-89	50% of the Price
≤30 days	70% of the Price

**10. Return Material Authorization.** All returns of Products must be authorized by Seller via a return material authorization (RMA). Such returns will be subject to a minimum 35% restocking fee and Buyer will be responsible for all shipping costs and expenses.

**11. Limited Warranty.** Unless otherwise agreed to in writing signed by Seller, Seller warrants to Buyer that the Products will be free from defects in material and workmanship for a period of twelve (12) months following the date of delivery to the Delivery Location (the “Warranty Period”). If, prior to the expiration of the Warranty Period, Buyer informs Seller in writing of any breach of this limited warranty, then Seller may repair or replace the Products that gave rise to the breach or, in Seller’s sole and exclusive discretion, refund the amounts that Buyer paid for the Products. The foregoing limited warranty do not apply to (i) any defect in Products not manufactured by Seller; and (ii) any Products manufactured according to Buyer’s specifications. Buyer will bear the costs of access, de-installation, re-installation and transportation of the Products to Seller and back to Buyer. Any repair or replacement pursuant to this limited warranty will not extend the Warranty Period. Seller does not warrant the Products, or any repaired or replacement parts, against normal wear and tear or corrosion. This limited warranty and remedy are expressly conditioned upon: (i) Buyer’s payment of the purchase price in full, (ii) Buyer giving written notice of the defect to Seller within the Warranty Period, (iii) the proper storage, installation, operation, use, and maintenance of the Products and (iv) the absence of any unauthorized modification or repair of the Products. THE REMEDIES SET FORTH IN THIS SECTION 11 ARE BUYER’S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 11. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**12. Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF OPPORTUNITY, ARISING OUT OF OR RELATING TO THE SALE OF THE PRODUCTS OR ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN

ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER. Buyer agrees that these limitations of liability are an essential part of the Terms, and that such terms shall be conveyed to and made binding upon any customer of Buyer that acquires the Products, alone or in combinations with other items from Buyer.

### **13. Compliance with Law.**

- a. Buyer shall comply with all applicable laws, regulations and ordinances including, without limitation, all applicable relevant export controls and anticorruption laws including the Foreign Corrupt Practices Act. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms. Moreover, Buyer represents and warrants that Buyer is not listed on (i) the US Department of Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals and Blocked Persons list (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)); (ii) the US Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)); or (iii) located in or operating under license issued by a jurisdiction identified by the US Department of State as a sponsor of international terrorism, by the US Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international money laundering principles or procedures by an intergovernmental group or organization of which the US is a member. Seller will not engage in or assist with any illegal export or re-export of Products. Buyer is responsible for obtaining all necessary licenses for all exports or re-exports.
- b. In addition, Buyer shall comply with interim final rule "Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification" found at <https://www.federalregister.gov/documents/2022/10/13/2022-21658/implementation-of-additional-export-controls-certain-advanced-computing-and-semiconductor>, and any finalized rule based off the foregoing. Specifically, Buyer shall determine, before any purchase, and downstream sale or distribution of Products to any entity in the People's Republic of China, whether any such "end user," as defined in the applicable regulations, is prohibited from acquiring said Product. Buyer, at a minimum, shall determine use cases for each such end user, and provide written evidence of such determination upon Seller's request. Any end user or use case that does not comply with U.S. export controls shall constitute a material breach of this Agreement, allowing Seller to terminate this Agreement for cause, and Buyer shall indemnify Seller for all damages, costs, and expenses that arise out of such noncompliance.

**14. Indemnification.** Seller will indemnify, and, at its election, defend, Buyer against claims asserted against Buyer in any suit or proceeding for intellectual property infringement asserted against the Products. The foregoing shall not apply to the following claims:

- a. Those asserted against features of the Product attributable in whole or in part to Seller's inclusion of technology given by Buyer to Seller, or in compliance with Buyer's designs, specifications or instructions;
- b. Those asserted against the Product attributable in whole or in part to the Product's modification by anyone other than Seller;
- c. Those asserted against the Product based on a use that is not in accordance with documentation or instructions for use;
- d. Any claim that was made in response to a suit or proceeding first filed by Buyer;
- e. Those asserting that you willfully infringed; and
- f. Those including an allegation that Seller or Products indirectly infringes, including by inducement or contributory infringement.

**15. Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**16. Entire Agreement; Assignment and Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller in respect of the subject matter hereof and supersedes all prior agreements whether written or oral, with respect thereto. Buyer shall neither assign any rights nor delegate any duties under this Agreement without the prior written consent of Seller. No claim or right of Seller arising out of a breach of this Agreement shall be discharged in whole or in part by waiver or renunciation of such claim or right unless such waiver or renunciation is made by Seller in writing. No delay on the part of Seller in exercising any right hereunder shall operate as a waiver or renunciation thereof, nor preclude any further exercise thereof or the exercise of any other such right.

**17. Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. Upon the occurrence of any such event, the time period for Seller's performance shall be extended by the duration of the event plus 45 days thereafter.

**18. No License.**

- a. Except as provided in this Section 15, the sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other intellectual property rights owned or controlled by Seller; it being specifically understood and agreed that all the rights are reserved to Seller. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any

the Products. If software is provided by Seller in connection with the use of the Products, Buyer agrees that the software may only be used in connection with the use and operation of the Products and Buyer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Buyer is a U.S. Government agency, Buyer acknowledges that the software provided with the Products under this Agreement is a commercial item that has been developed at private expense and not under a Government contract. Buyer shall not, without Seller's written consent, use any Product to develop its own business or to compete with Seller or assist a competitor of Seller, nor shall Buyer reverse engineer or disassemble any tangible objects that embody the Products.

- b. The Products are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license or sub-license, expressly or by implication, with respect to the Products, or any associated intellectual property therein, including without limitation to any rights to manufacture, duplicate or otherwise copy or reproduce any of the Products as set forth in Section 15(a) herein. Buyer shall take appropriate steps with its customers, as Seller may request, to inform them of and assure compliance with the restrictions contained in this Section 15. At a minimum Buyer shall insure that any sales quote or order acknowledgement for the sale of Products to its customers shall include language that reflects the terms and restrictions in Section 15(a) herein. Additionally, Buyer shall include all proprietary notices (such as US Patent Numbers, Trademark, copyright notices) on the Products, packaging, labeling, standard promotional material and any other associated material and items, as requested by Seller; and Buyer shall keep such notices intact and shall not remove, alter or modify such notices.

**19. Future Trade Restrictions.** If, following the date of this Agreement, (i) there shall be imposed any import, export or other restrictions on interstate or international trade or commerce or there shall be enacted or otherwise issued any law, regulation, or order regulating or purporting to regulate any import, export or other restrictions on interstate or international trade or commerce in any way (such restrictions, laws, regulations and orders being hereinafter collectively referred to as "Trade Restrictions"), including, without limitation, any creation or increase (whether retaliatory or otherwise) of tariffs (pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, or otherwise), import surcharges, antidumping or countervailing duties, fees, or any other form of charges whatsoever, or the imposition of any import or export quota or embargo, and (ii) Seller's ability to perform this Agreement is adversely affected thereby, or its underlying economic assumptions with respect to this Agreement become inaccurate in any respect, Seller shall have the option either (a) to terminate this Agreement in whole or in part by written notice to Buyer, without incurring any liability to Buyer thereby, or (b) to continue to perform all of its obligations hereunder in respect of deliveries of the Products, and in either case (except, if this Agreement is terminated in whole), Seller shall have the right to increase the price of the Products by an amount equal to the full amount of all such tariffs, surcharges, duties, fees, and other charges, and any other cost or expense, imposed on or incurred by Seller in connection with the sale of Products as a result of the imposition, enactment or issuance of any Trade Restriction.

**20. Trade Restrictions and Sanctions.** Upon the Seller's request at any time, Buyer shall provide Seller with a certificate of information with respect to the final destination and the end-use of the Products and other matters related to the transaction, in the form satisfactory to Seller. In the event that Buyer learns any fact that puts Seller in violation of any U.S. trade sanction (the "Fact"), Buyer shall immediately notify Seller. Seller shall, within three (3) business days of receipt of such notice,

or within a reasonable time after Seller learns the Fact through another means, notify Buyer whether Seller elects to terminate this Agreement for cause with respect to the shipment at issue or apply to OFAC for an appropriate license. In the event that Seller applies for a license but OFAC fails for any reason to issue a license within a reasonable time following receipt of Seller's application, Seller may elect to terminate this Agreement, which shall be deemed a termination for cause.

**21. Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to the conflicts of laws principles thereof; provided, however, that if this Agreement is made for the sale or delivery to Buyer the address of which shown on the face of this document is outside the United States, the trade terms provided herein such as EXW shall have the meanings set forth in the Incoterms© 2010. Seller and Buyer hereby expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to the sales covered by this Agreement. Buyer hereby irrevocably consents to the jurisdiction of the Federal and California State courts located in San Francisco, California in connection with any and all suits, actions or other proceedings arising out of or in relation to this Agreement. BUYER WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, ANY WORK, OR ANY MATTERS CONTEMPLATED HEREUNDER.

**22. Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre- paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**23. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24. Survival.** Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Compliance with Laws, Governing Law, No License and Survival.