



## Global Terms and Conditions of Purchase

*last updated April 28, 2022*

- 1. Definitions.** The term "Buyer" as used herein shall refer to Yield Engineering Systems, Inc., a California corporation. The term "Seller" as used herein shall refer to the Supplier designated on the Buyer's Purchase Order ("PO"). The terms "Product" or "Products" refer to the goods or services that Seller makes available pursuant to this Agreement. Seller acknowledges that it has reviewed and agrees to be bound by the following terms and conditions (these "Terms") with respect to any Products sold by Seller. The term "Agreement" means these Terms, the PO and any confirmation of sale or invoice issued by Buyer.
- 2. Market Rights.** The relationship of the parties under this Agreement shall be non-exclusive in all respects. Other than the obligations to comply fully with the terms of a separate confidentiality agreement, nothing in this Agreement shall be deemed to restrict 1) Buyer's rights to independently develop or cause to be developed and to make commercial usage of similar or competing technology as that which is incorporated in the Products, nor 2) either party's right to enter into any business arrangement with any third party, including agreements similar to this Agreement.
- 3. Prices.** Seller represents and warrants that during the term of this Agreement, the purchase price for the sale of the Products provided to Buyer under this Agreement shall be what is listed in the PO. No adjustments will be made except as mutually agreed by the parties in writing. If the Product does not remain competitive in terms of technology, design, quality, or price, compared to similar goods available to Buyer, the parties agree to make commercially reasonable efforts to agree upon any changes that are necessary to cause the Product to be competitive.
- 4. Volume Adjustments.** Any forecast or annual usage figures provided hereunder are best estimates, which are subject to change as business conditions change and are not to be construed as a commitment. Seller shall rely upon such figures at its own risk. Notwithstanding any provision herein or any other verbal or written requirements or provisions, Buyer shall not be obligated to any specific dollar expenditure.
- 5. Forecasts.** If applicable, Buyer shall make reasonable efforts to provide Seller with a forecast of Products. The forecast is intended to be used by Seller for materials and manufacturing planning only, and may not be used for any other purpose.
- 6. Purchase Orders.** During the term of this Agreement, Buyer may provide Seller with POs for Products, which shall create a bidding obligation to purchase such Products from Seller with a specified lead time for the applicable Products. Each PO shall specify (i) the quantity and part number of Products ordered; (ii) the price; (iii) the delivery date of such Products; (iv) the delivery destination; and (v) any special shipping instructions regarding the Products. Each PO shall be subject to acceptance by Seller, such acceptance to not be unreasonably withheld or delayed. Such PO shall be deemed accepted by Seller if no written rejection is provided to Buyer within five (5) days of receipt of such PO. In the event of a conflict between the PO and these Terms, these Terms shall control.

7. **Delivery.** Seller shall ensure prompt delivery of Products purchased under this Agreement and in the method specified in the PO, with a goal of 100% on time delivery. Products shall be deemed to have been delivered “on time” if they have been delivered within three (3) days before the delivery date and zero (0) days after the delivery date. Any delivery that does not arrive at the specified location, does not contain the quantity of Products specified, or does not contain the correct part number, shall be considered late. Seller shall notify Buyer in writing if it becomes aware that any Product delivery will be late.
  
8. **Acceptance.** Buyer shall accept or reject each shipment within two (2) weeks of delivery. All products shall be deemed accepted by Buyer unless Buyer provides Seller with written notice of objection, specifying the reason that such shipment is non-confirming or otherwise does not meet the requirements set forth in this Agreement within two (2) weeks of delivery..
  
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. **Shipping.** 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. Title and risk of loss passes to Buyer upon delivery of the Products to the delivery location specified in the applicable PO.
  
11. **Discontinuance of Products.** In the event Seller chooses to discontinue the manufacturing of any of the Products, Seller shall provide Buyer with not less than two (2) years prior written notice of such manufacturing discontinuance, followed by an additional three (3) year period during which Product deliveries may be scheduled and supported.
  
12. **Payment.** Seller will invoice Buyer for amounts due for the Products upon shipment. Buyer shall pay Seller within forty-five (45) days of Seller’s invoice date. Any payment not paid when due, which is

not the subject of a bona fide dispute between the parties in good faith, may accrue interest from the date due until the date paid at a rate of 1% per annum, or the maximum rate allowed under applicable law, whichever is less. All prices are exclusive of federal, state, or local sales, use, excise, or similar taxes applicable to the sale of Products sold pursuant to this Agreement.

- 13. Warranty.** For a period of three (3) years after the date of shipment of Products to Customer, (the “Warranty Period”), Seller warrants that each Product furnished under this Agreement shall (a) materially conform to the specifications for such Product; and, (b) be free from defects in design, material and workmanship that materially affect performance and functionality. This warranty will be valid only during the Warranty Period. Seller shall, at its option, repair or, replace the affected Product(s) or, if neither repair nor replacement is commercially reasonable, Seller shall refund the monies paid by Buyer for any defective Product for which Buyer invoked this warranty. The warranty period for repaired or replacement Products shall be three (3) years from the date of shipment of replacement Products. If Buyer incurs any other loss or damage because a Product is non-conforming or defective, then Seller shall pay (or reimburse Buyer) for such loss or damage. Seller must resolve Buyer’s warranty claims within 30 calendar days, unless otherwise agreed by the parties.
- 14. Returns.** Any returns of Products during the Warranty Period must be approved in writing by Supplier prior to return of Products by Buyer. Seller shall provide Buyer with a Return Material Authorization (RMA) number within five (5) days of Seller’s receipt of a written request by Buyer. Requests for RMAs must specify the Product, the Product serial number, and the reason for return. Products must be returned in the same or equivalent packaging as originally provided by Seller, with the RMA number included on the shipping container. Supplier shall be responsible for any shipping costs associated with returning the Product, and shipping the repaired or replacement Product to Buyer.
- 15. Indemnification.** Seller will indemnify and hold Buyer harmless from any and all damages, liabilities, judgments, losses, costs and expenses (including attorneys’ fees) suffered or incurred by Buyer in connection with any claim, demand, suit or other legal action brought by a third party against Buyer based upon the actual or alleged infringement or misappropriation of intellectual property rights by Buyer’s use or distribution of 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 Buyer willfully infringed; and
  - f. Those including an allegation that Seller or Products indirectly infringes, including by inducement or contributory infringement.
- 16. Termination.** In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to Seller, if Seller: (i) has not performed or complied with any of these Terms, in whole or in part; or (ii) 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.

- 17. 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. Seller shall neither assign any rights nor delegate any duties under this Agreement without the prior written consent of Buyer. No claim or right of Buyer 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 Buyer in writing. No delay on the part of Buyer 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.
- 18. Force Majeure.** Neither party shall not be liable or responsible to the other party, 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 such party 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 performance shall be extended by the duration of the event plus 45 days thereafter.
- 19. No License.** 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.
- 20. 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; provided however, that Buyer may elect to terminate this Agreement if Buyer does not agree to such price increase.

- 21. Compliance.** Each Party shall comply with all applicable laws and regulations, statutes, treaties, administrative orders and court orders, including export laws, as well as (i) the laws and regulations of other applicable countries which prohibit export or diversion of certain technical Products to certain countries and individuals and any other applicable law, and (ii) the U.S. Foreign Corrupt Practices Act and Anti-Boycott Regulations in their respective dealings with the Products and in performing their respective obligations under this Agreement. Buyer shall not export or re-export, or request Seller to export or re-export, any Products, including all Products and/or technical data received from Seller or any direct product thereof, directly or indirectly, to any country, entity or person prohibited by the U.S. Government. Buyer acknowledges that compliance with U.S. export laws may cause delays in shipments and/or prohibit Seller from exporting certain Products to certain countries and entities for certain uses. In no event shall Seller be liable for any such delays or prohibition.
- 22. 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. SELLER 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.
- 23. 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. EXCEPT FOR INDEMNITY OBLIGATIONS, 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 FIVE (5) TIMES THE AMOUNTS PAID BY BUYER FOR THE PRODUCTS SOLD HEREUNDER.

- 24. 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 PO 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.
- 25. 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.
- 26. 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, Severability, and Survival.