

**Blickfeld North America Inc.**  
**General Terms and Conditions of Sale**

As of November 2022

**1. Exclusive Terms/Entire Agreement**

These General Terms and Conditions of Sale (the “Terms and Conditions”) exclusively govern the sale of any goods and applicable services (the “Products”) furnished by Blickfeld North America Inc. (“BFNA”) to any person or entity (“Customer”). A contract for the sale of Products is formed when (i) the Customer accepts a written quotation, proposal or other similar document from BFNA for the purchase of Products (collectively a “Quotation”), (ii) the Customer issues one or more purchase orders (the “Purchase Orders”) to BFNA, and (iii) BFNA accepts the Purchase Order by issuing an Order Acknowledgement or ships the Products to Customer (the Quotation, Purchase Order, Order Acknowledgement, and these Terms and Conditions together constitute the “Agreement”). Purchaser may issue a Purchase Order or other similar document for its internal administrative purposes but if any of the terms of such Purchase Order or similar document are inconsistent with the Quotation, the Order Acknowledgement, or these Terms and Conditions, the Quotation, the Order Acknowledgement, and these Terms and Conditions shall control. Should the parties have a current, fully executed agreement in place for the purchase of Products, the terms and conditions of such contract shall prevail to the extent they are inconsistent with these Terms and Conditions. Unless BFNA has explicitly accepted in writing additional or differing terms, BFNA expressly rejects any terms and conditions of Customer that are in addition to or in conflict with the Quotation, the Order Acknowledgement, or these Terms and Conditions, and any such additional or conflicting terms or conditions shall be of no force or effect with respect to the matters covered by the Agreement (regardless of whether any Products are provided). All Quotations are subject to change until an Agreement is formed. These Terms and Conditions may be updated by BFNA by posting the current version at <https://www.blickfeld.com/gtc/na-inc.pdf>

**2. Payment**

The prices of the Products are set forth in the Quotation. Unless otherwise specifically set forth in the Quotation, the payment terms for the sale of all Products are net 15 days. All payments must be made in U.S. Dollars in immediately available funds, by wire transfer, ACH or other approved electronic payment system, without setoff or deduction. A service charge of one and one-half percent per month or portion of a month (or, if lower, the highest amount permitted by law) will be imposed on all past due amounts. Customer agrees to pay all expenses of collection, including reasonable attorneys' fees, if amounts owing by Customer are collected through an attorney or other collection agent. In addition to any other rights that BFNA may have under the Agreement or the applicable law, BFNA may at any time alter or suspend credit or refuse to ship Products or cancel unfilled orders if, in BFNA's reasonable opinion, the

financial condition of Customer or the status of Customer's account warrants such action.

### 3. **Force Majeure**

Other than Customer's obligation to make payments when due, neither party shall be liable for any delay in or impairment of performance resulting in whole or in part from fires, floods, earthquakes, pandemic, epidemic, major equipment failure, or other catastrophes; strikes, lockouts or labor disruptions; wars, riots, civil commotion, vandalism, terrorist acts, or embargo delays; government allocations or priorities; national, state, provincial or local emergency, quarantine restrictions, or other civil disturbances; shortages, delays or failures of transportation equipment, telecommunication, public infrastructure fuel, power, labor or materials; cyber-attack; severe weather conditions; any applicable governmental or judicial law, regulation, order or decree; or any other circumstance or cause beyond the control of BFNA. In any such event, BFNA's performance obligation shall be suspended until such time as it can reasonably resume work.

### 4. **Acceptance of Products**

Unless otherwise agreed upon by the parties in writing, delivery terms are Ex Works (Incoterms 2020) BFNA's designated location. All delivery times provided by BFNA to Customer are estimates and are nonbinding. Customer must inspect the Products upon receipt. Products shall be deemed accepted unless Customer provides BFNA written notice within five working days following delivery of any claim that the Products are of incorrect quantity, do not conform to the agreed upon terms, or contain material defects. If Customer fails to give such notice, the Products shall be deemed to conform to the Agreement and Customer shall be deemed to have accepted the Products. Customer expressly waives any rights Customer may have otherwise had after the expiration of such five-day period to revoke acceptance or claim breach of warranty with respect to any material defects that could have been discovered with reasonable diligence upon such inspection.

### 5. **Services**

If compensated services (e.g., training, consulting, commissioning or implementation services) (Services) are included in the Quotation, such BFNA shall provide such Services only pursuant to a separate statement of work signed by BFNA and Customer. Each statement of work will contain a scope of work, including a description of the tasks to be performed by or on behalf of BFNA, the Customer locations where Services will be performed (if applicable), the project deliverables and documentation to be produced, acceptance criteria, a schedule of performance, either a fixed price or, if Services are to be performed on a time and material basis, a statement of BFNA's rates, and a schedule of payments. Services are provided on a commercially-reasonable efforts basis and no warranties apply to such services.

## 6. Warranty and Related Matters

A. The Products are covered by the following exclusive limited warranty: BFNA warrants that the Products (i) will be free from material defects in material and workmanship for a period of twelve months from the date of shipment; (ii) do not infringe the intellectual property rights of third parties; and (iii) will be provided to Customer with good title free of liens or other encumbrances.

B. Customer's sole remedy in the event of a breach of warranty under Sections 6.A.(i) or (iii) shall be, at BFNA's option, the repair or replacement of the defective Products and in the case of a breach of Section 6.A.(ii) shall be, at BFNA's option, redesign or replace the product with non-infringing components, or rescind the contract and provide Customer a pro-rated refund. Prior to returning a product, Customer must obtain an RMA number and instructions for return from BFNA.

C. The following specific exclusions apply to the warranty: (i) normal maintenance service, (ii) any damage to Products caused by events or actions outside the ordinary and expected or recommended storage, installation, commissioning, use or maintenance of the Products; (iii) abuse or misuse of any Products; and (iv) repair or alteration of any Products by anyone other than BFNA.

D. BFNA shall not be liable for a breach of the warranty set forth in Section 6(a)(i) unless: (i) Customer gives written notice of the defect, reasonably described, to BFNA within 5 business days of the time when Customer discovers or ought to have discovered the defect; (ii) BFNA is given reasonable opportunity after receiving the notice to examine such Products and Customer (if requested to do so by BFNA) returns such Products to BFNA's place of business at BFNA's cost for the examination to take place there; and (iii) BFNA reasonably verifies Customer's claim that the Products are defective.

E. (i) BFNA reserves the right to make minor changes to the Products, including changes with regard to color, shape, dimensions or material; (ii) unless otherwise expressly agreed in individual cases, the Products are not suitable for use in certain safety applications, such as in nuclear power facilities or critical medical areas, applications that cannot tolerate the loss of functionality of the sensor, or those applications that are in close proximity of strong magnetic fields; (iii) Customer's use of the Products shall comply with all local regulations of the operation of laser devices; (v) information provided in sales catalogues, price lists, user manuals and other informational BFNA documents does not constitute a warranty for a particular quality of the Products or other services – the sole and exclusive warranty is set out in these Terms and Conditions; and (v) all safety precautions that are necessary due to special conditions at the Customer's premises shall be taken by the Customer at its own expense, even if the installation or assembly and commissioning of the Products is performed by BFNA.

F. Goods manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. **Third Party Products** are not covered by the warranty in this Section 5. For the avoidance of doubt, **BFNA MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR**

**IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE**

G. THIS WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE PRODUCTS AND IS EXPRESSLY IN LIEU OF ANY WARRANTIES OR CONDITIONS OTHERWISE IMPLIED BY LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES STATED HEREIN SHALL BE THE ONLY WARRANTY REMEDIES AVAILABLE. BFNA DOES NOT ASSUME ANY OTHER OBLIGATION OR RESPONSIBILITY WITH RESPECT TO THE CONDITION OF THE PRODUCTS AND HAS NOT AUTHORIZED ANY PERSON TO ASSUME ANY OTHER OBLIGATION OR LIABILITY ON ITS BEHALF.

**7. Limitation of Liability**

INDEPENDENT OF ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL BFNA BE LIABLE TO CUSTOMER FOR LOST PROFITS, LOST REVENUE, DIMINUTION IN VALUE, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY, ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BFNA HAS BEEN ADVISED, HAS OTHER REASON TO KNOW, OR IN FACT KNOWS OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL BFNA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO BFNA FOR THE PURCHASE OF THE APPLIABLE PRODUCT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE FOREGOING LIMITATION OF BFNA'S LIABILITY SHALL NOT APPLY TO: (A) BFNA'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (B) BODILY INJURY OR PROPERTY DAMAGE RESULTING DIRECTLY AND SOLELY FROM BFNA'S ACTS OR OMISSIONS. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PARTIES ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

**8. Intellectual Property**

Customer acknowledges that the Agreement does not transfer to Customer any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right of BFNA (collectively "Intellectual Property Rights"), including Intellectual Property Rights that BFNA makes available to Customer, or to which Customer has access under the Agreement, or that are embodied in the Products, other than the right to use the Intellectual Property Rights strictly and solely in conjunction with Customer's purchase and use of the Products. BFNA retains sole and exclusive ownership of all of its Intellectual Property Rights.

9. **Software**

A. **Firmware.** The Products may contain software that is built into or used in the circuitry of the Products ("Firmware"). BFNA hereby grants to Customer, its subsidiaries and affiliates, and their respective successors and permitted assigns, a nonexclusive, perpetual, irrevocable, royalty-free, worldwide, non-sublicensable license to use the Firmware solely in connection with the Products; provided, however, that (i) Customer will only transfer possession of the Firmware in conjunction with a transfer, service or repair of the associated Product and Customer shall not sell or transfer the Firmware separately from the Product; and (ii) Customer shall not remove any copyright notice or proprietary legend from the Firmware, or load, use or install the Firmware on any hardware except hardware that is provided or approved by BFNA. Customer acknowledges BFNA's claim that the Firmware, if any, furnished hereunder contains valuable trade secrets of BFNA and agrees that it will not translate, reverse engineer, de-compile or disassemble or make any other unauthorized use of such Firmware. Customer also acknowledges BFNA's claim that unauthorized use of such Firmware will greatly diminish the value of such trade secrets and cause irreparable harm to BFNA, and Customer agrees that BFNA, in addition to any other remedies it may have, shall be entitled to equitable relief to protect such trade secrets, including without limitation injunctive relief. BFNA warrants that the Firmware will operate as intended for a period of thirty (30) days following delivery of the associated Product to Customer. If Customer notifies BFNA in writing of a defect in the Firmware within such 30-day period, BFNA will develop and implement corrective actions, including by: (a) promptly investigating and reporting on the root cause of the problem; (b) remedying the cause of the problem; and (c) making written recommendations, if any, to Customer for improvements in procedures.

B. If software that is included in or connected to the Products is developed by BFNA (as a component in the Products or as an independent delivery item) ("BFNA Software"), the terms of the applicable license are attached hereto and incorporated herein as Appendix A or if no Appendix A is executed by the parties the terms of the applicable license will be attached to or included with the software. BFNA grants to Customer a non-exclusive, non-transferable, and unlimited right to use the BFNA software on a single computer system. The use of the software within the scope of Application Service Providing, in network operation, in data center operation, or in outsourcing is not permitted unless BFNA has expressly approved it in writing in advance.

C. The Customer is not permitted: (i) to transfer the software or the related user documentation to third parties or to make them accessible to third parties in any other way without BFNA's prior written consent); (ii) to modify the software without BFNA's prior written consent; (iii) to create works derived from the software or to reproduce the related documents (user documentation); (iv) to translate or modify the software or the related documents; or (v) to create works derived therefrom. BFNA is not obligated to provide the source code underlying the software product.

D. All rights to the BFNA software and the related documents as well as to modifications made by BFNA remain with BFNA.

E. The software and the related documents are to be used and stored in such a way that they are adequately secured against non-contractual use, duplication, or transfer. The making of a copy for backup purposes is permissible provided that a reference to BFNA's copyrights is attached to or included in the backup copy.

F. Software supplied by BFNA is, unless expressly promised otherwise, not fault-tolerant and has not been designed or manufactured for use in hazardous environments where trouble-free operation is mandatory, such as nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, or where failure of the technology would result directly in death, personal injury, or serious damage to property or the environment.

G. BFNA may correct errors or provide updates to the software exclusively by providing new program versions within the scope of continuous product maintenance. The Customer is obligated to support BFNA within reasonable limits in the determination of program errors (e.g., by sending error logs and other necessary information) upon BFNA's request. The delivery of a new program version does not restart the warranty period.

## 10. **Confidentiality and Publicity**

BFNA and Customer will treat as confidential all (a) commercial and technical details concerning the Agreement and the Products, and (b) each other's trade and business secrets, as well as other confidential and proprietary information that becomes known to them during their business relationship (collectively the "Confidential Material"). BFNA and Customer will not use Confidential Material for any purpose other than the purposes of the Agreement. This confidentiality obligation shall not apply if the Confidential Material (i) is publicly known at the time of disclosure or becomes publicly known at a later point in time and this circumstance is not due to misconduct on the part of the receiving party; (ii) has come to the knowledge of the receiving party lawfully and without any obligation of confidentiality by means other than through the disclosing party; (iii) has demonstrably been independently developed by the receiving party; (iv) is required by law to be made available to public authorities; or (v) is required to be disclosed by order of a court or regulatory authority.

## 11. **Export/Import**

Products and related technology sold by BFNA may be subject to export control regulations of the United States, the European Union, and/or other countries (collectively "Export Laws"). Customer shall comply with such Export Laws and obtain any license or permit required to transfer, export, re-export or import Products and related technology. Customer shall not export or re-export the Products and related technology to any country or entity to which such export or re-export is prohibited, including any country or entity under sanction or embargoes administered by the United States, European Union or other countries. Customer shall not use the Product and related technology in relation to chemical, biological or nuclear weapons, rocket systems (including ballistic missile systems, space launch vehicles and sounding rockets) or unmanned air vehicles capable of delivering same, or in the development of any weapons of mass destruction.

**12. Applicable Law**

The Agreement shall be deemed to have been entered into in the State of Ohio and all questions concerning the validity, interpretation or performance of any of its terms or provisions, or of any rights or obligations of the parties, shall be governed by and resolved in accordance with the laws of the State of Ohio, without reference to its choice of law rules or to the laws of any other jurisdiction and excluding the United Nations Convention on Contracts for the International Sale of Products, and the 1974 Convention on the Limitation Period in the International Sale of Products, as amended by the 1980 Vienna Protocol.

**13. Exclusive Jurisdiction**

Customer agrees that any action at law or equity or other judicial proceeding for the enforcement of the Agreement or any of its provisions, or relating to any dispute, claim or controversy arising under, out of, in connection with or relating to the Agreement, or any course of conduct, course of dealing, statements (oral or written), or actions of BFNA or Customer relating to the Agreement, shall be instituted only in a federal or state court located within the geographic boundaries of the U.S. District Court for the Northern District of Ohio, Western Division; provided that at its option BFNA may elect to bring an action at Customer's principal place of business or in any jurisdiction in which the Products or other assets of Customer may be found. The parties irrevocably consent to process being served in any suit, action, or proceeding by mailing a copy thereof via registered or certified mail, postage prepaid, return receipt requested, to the address of the party specified in all business correspondence. To the extent they may effectively do so under applicable law, the parties irrevocably waive all claim of error by reason of such service and agree that such service (i) shall be deemed, in every respect, effective service of process upon it in any suit, action or proceeding and (ii) shall be taken and held to be valid personal service upon and personal delivery to such party.

**14. Waiver of Jury Trial**

TO THE FULLEST EXTENT PERMITTED BY LAW, BFNA AND CUSTOMER HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND WITH THE ADVICE OF COUNSEL WAIVE ANY RIGHTS THAT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE, CLAIM OR CONTROVERSY BASED ON THE AGREEMENT OR THE PRODUCTS, OR RELATING TO, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE AGREEMENT OR THE PRODUCTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (ORAL OR WRITTEN), OR ACTIONS OF BFNA OR CUSTOMER RELATING TO THE AGREEMENT OR THE PRODUCTS. THIS WAIVER WILL APPLY REGARDLESS OF HOW ANY CAUSE OF ACTION IS DENOMINATED AND REGARDLESS OF WHAT RELIEF IS SOUGHT. IF THIS WAIVER IS INEFFECTIVE AS TO ONE OR MORE CAUSES OF ACTION FOR ANY REASON, THIS WAIVER WILL REMAIN EFFECTIVE AS TO ALL OTHER CAUSES OF ACTION.



15. **Miscellaneous**

A. If any clause contained in the Agreement is held contrary to any applicable law or otherwise unenforceable, then such offending clause shall be stricken and the balance of the Agreement shall remain in full force and effect.

B. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but it may not be assigned by Customer without the prior written consent of BFNA.

C. BFNA will always have the right to enforce the provisions of the Agreement in strict accordance with its terms. BFNA's failure to enforce any such provision or to exercise any right available to it upon the occurrence of any default shall not constitute a waiver of, or bar BFNA from enforcing or exercising, any such provision or right upon the subsequent occurrence of the same or any other default.

D. All rights and remedies of BFNA are cumulative and concurrent, and the exercise of any right or remedy shall not be deemed a waiver or release of any other right or remedy.

E. No modification of the Agreement shall be binding on BFNA unless it is in writing, is signed by an authorized representative of BFNA, and refers specifically to the Agreement and the portions that it is intended to modify.

F. Unless otherwise specified herein, all notices, requests and other communications to any party shall be in writing and shall be deemed to have been effectively given and received (i) the day which the notice is delivered if sent prepaid via nationally recognized overnight courier, signature requested, or (b) upon delivery when delivered personally. Notices shall be delivered to such party at its address set forth below or such other address as such party may hereafter specify for that purpose by notice to the other party.

G. Interpretation of the Agreement will be governed by the following rules of construction: (i) words in the singular will be held to include the plural and vice versa and words of one gender will be held to include the other gender as the context requires, (ii) the word "including" and words of similar import will mean "including without limitation," (iii) provisions will apply, when appropriate, to successive events and transactions, (iv) the headings contained in the Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of the Agreement, and (v) the Agreement will be deemed to have been negotiated and prepared by both BFNA and Customer equally, and no inference regarding any particular drafter of the Agreement may be drawn.

H. Sections 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15 **[to be reviewed prior to execution]** shall survive termination or expiration of this Agreement for any reason.



## Safety information

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- The Cube is not permitted to be used in potentially explosive or corrosive environments.
- The indoor variants CUBE1-IH and CURA1-IH are not permitted to be used in wet environments.
- The Cube is not a safety component within the scope of the Machinery Directive (2006 / 42 / EC) or comparable regulations, which are related to functional safety.
- Strong shaking or vibrations, e.g. due to dropping of the Cube, can permanently damage the optical components. Blickfeld cannot be held liable for any damage.
- Do not use the Cube in the close proximity of strong magnetic fields.