

Terms and Conditions of Sale

1. **Construction.** By ordering goods or services described herein, the buyer (“Buyer”) acknowledges it is transacting business at DEW Engineering and Development’s (“DEW”), including its subsidiaries, principal place of business in Ottawa, Ontario, and at any other location where DEW manufactures said goods or from which DEW provides services.
2. **Quotation.** Although labeled “Terms and Conditions of Sale,” DEW intends this document as an offer to sell (“Offer” or “Order”). The terms and conditions of this Order, together with those set forth or referred to on the face of this form as accepted by DEW in writing, constitute the entire agreement for sale. DEW may withdraw its Offer at any time prior to Buyer’s acceptance. Unless otherwise indicated, every DEW Offer expires thirty (30) days from the date of issuance. DEW will use commercially reasonable efforts to fill Orders properly placed and accepted in accordance with these Terms and Conditions of Sale. This Order, however, is not a requirements contract. In the unlikely event of back-order or other limited supply of goods, DEW will make the goods available in a manner it determines to be equitable under the circumstances and in compliance with applicable law. Published weights and dimensions are approximate only. Certified dimension drawings can be obtained upon request. Manuals, programs, listings, drawings or other documentation required hereunder must be referenced specifically. This Order is not intended to create any third-party beneficiary rights and DEW hereby rejects any claims by any third-parties.
3. **Acceptance and Acknowledgement of Offer.** Buyer’s placement of an order for goods or services in response to this Offer constitutes Buyer’s acceptance of the terms of this Offer. Buyer’s acceptance of the Offer is expressly limited to the specifications, prices, and other terms stated in the Offer, including these “Terms and Conditions of Sale”. **Notice is hereby given, and Buyer acknowledges, that different or additional terms in Buyer’s order shall be considered material alterations of this Offer and are expressly rejected and shall not be effective without the written approval of an authorized DEW representative.**
4. **Price.** DEW reserves the right during execution of this Order to amend its prices if increases in raw materials, wages or the cost of production of the goods increase significantly as determined solely by DEW. Such price increase shall become effective thirty (30) days after DEW provides Buyer with written notice of such price increase. Stenographical, typographical and clerical errors are subject to correction. Unless otherwise stated on DEW’s Quote, prices quoted are for Goods only and do not include technical data, proprietary rights of any kind, patent rights, tests other than DEW standard tests, or packaging other than normal domestic commercial packaging, unless expressly agreed to in writing by DEW.
5. **Export Compliance.** DEW is subject to Canadian and U.S. export/import control laws and regulations including without limitation, the Canadian Controlled Goods Act, Export Administration Regulations and the International Traffic in Arms Regulations. Buyer agrees that it will not export, re-export or otherwise transfer, directly or indirectly, goods, technical data and/or services provided by DEW in violation of Canadian or U.S. law. Buyer is responsible for obtaining any necessary Canadian or U.S. government authorization required to ensure compliance of the Buyer with Canadian or U.S. law. Buyer represents and warrants any export controlled goods or information, which is subject to Controlled Goods or ITAR regulations, shall be appropriately marked or otherwise labeled in accordance with Canadian and/or U.S. law. Orders requiring DEW to obtain export licenses will be subject to additional fees and/or minimum order requirements.
6. **Aircraft Components.** Unless otherwise noted on the Buyer’s order, Buyer warrants that the goods or services subject to this Offer are not intended for use as components or components of assemblies used in aircraft (military or commercial).
7. **Contract Flow Down Provisions.** DEW hereby rejects all terms and conditions set forth under any other contract to which the Buyer is a party that is not otherwise negotiated and agreed to in writing signed by an authorized representative of DEW.

8. **Manufacturing.** If any of the goods covered by this Order are to be manufactured in accordance with drawings and/or specifications provided by Buyer (the “Specifications”), DEW shall manufacture the goods strictly in accordance with the Specifications. Buyer may make changes to the Specifications at any time upon reasonable advance notice to DEW. If such changes result in delay or additional expense to DEW or unusable raw materials, WIP or finished goods, or such changes result in the obsolescence of any goods or materials, an equitable adjustment of price and delivery schedule will be made.

9. **Quantity Modifications.** If the goods provided to Buyer under this Order are custom goods pursuant to Section 8, then DEW reserves the right to over or under ship by ten percent (10%) of the ordered quantity for any given shipment, until the Order is complete, and bill Buyer for the amount actually shipped. Nothing herein shall relieve either party from fulfilling the obligations set forth herein.

10. **Delivery.** DEW will make all reasonable efforts to observe the dates it has indicated for delivery or other performance. Unless otherwise agreed in writing, for domestic and international shipment, delivery is Ex Works (Incoterms 2010) DEW’s manufacturing site, packaged and packed as directed by Buyer.

11. **Title and Risk of Loss.** Risk of loss and title shall pass to Buyer upon delivery.

12. **Carrier.** In the event that Buyer designates a specific carrier, DEW will attempt to use that carrier. However, DEW may select an alternate carrier to transport the goods if, in DEW sole and exclusive discretion it determines use of such alternative carrier is necessary to satisfy delivery requirements. All freight, insurance and other shipping expenses shall be borne by Buyer. Buyer shall inspect shipments for freight damages at time of receipt and immediately notify carrier of any freight damage, file its claim directly with the carrier, and notify DEW of the damage. DEW is not liable for freight damage or for losses incurred by Buyer as the result of freight damage or delays.

13. **Handling Fee.** If DEW agrees to pre-pay freight charges on behalf of Buyer and add the prepaid freight charges to the total costs of this Order, then Buyer agrees to pay to DEW an additional administrative handling fee for each such shipment.

14. **Inspection and Revocation.** Buyer shall inspect goods upon delivery to ensure goods meet Buyer’s Specifications, but in no event later than thirty days (30) upon delivery of such goods. Within five (5) business days of Buyer’s inspection, Buyer shall provide written notice should goods fail to meet Buyer’s Specifications. For any goods not meeting Buyer’s Specifications, Buyer’s rights are limited to the provisions of paragraph 15 through 17.

15. **Warranty.**

15.1. DEW warrants that the portion of the goods manufactured by DEW provided under this Offer; (i) are free from defects in material and workmanship; and (ii) comply with the Buyer’s Specifications as described in this Offer. DEW does not make any warranties for the portion of the goods supplied by Buyer. DEW warranties shall commence upon the delivery of the goods and shall continue thereafter for twelve (12) months or until Buyer introduces the Goods into its assembly process or otherwise changes the composition of the Goods. These warranties do not cover damage to goods caused by abuse, misuse, accident or neglect of Buyer or its agents or customers.

15.2. **THESE ARE THE SOLE WARRANTIES OF DEW WITH RESPECT TO THE GOODS PROVIDED UNDER THIS OFFER. DEW MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED WITH REGARD TO THE GOODS OR OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER OR AS STATED IN ANY DEW LITERATURE OR OTHER SALES BROCHURES. DEW EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTIES OF NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**

15.3. Experimental, developmental or special application goods or goods requiring destructive testing are sold without warranty. In such case, DEW warrants that the goods shall meet applicable specifications when shipped by DEW but DEW shall have no other or further responsibility whatsoever.

16. **Buyer's Exclusive Remedies.** If Specifications are not met, DEW will, at its option, repair or replace said goods or services or refund the purchase price by crediting Buyer's account, unless such failure to meet Specifications is due to the portion of the goods provided by Buyer. Where a non-conformity with Specifications is due to the portion of the goods provided by Buyer, Buyer is responsible for all costs arising out of such non-conformity. DEW exercise of one of these options shall not prejudice its exercise of other options in other circumstances. Goods may not be returned to DEW without first obtaining a Returned Goods Authorization. The return to DEW of any nonconforming goods and delivery of any corrected or replaced goods shall be at DEW expense unless, after inspection by DEW, DEW determines, in its discretion, that the returned goods are conforming to Buyer's Specifications. Buyer shall retain title to returned goods until DEW verifies the goods do not meet Specifications. The purpose of the express exclusive warranty remedies is to provide Buyer with replacement, exchange or credit for non conforming goods. The exclusive remedies will not be deemed to have failed of their essential purpose as long as DEW is willing and able to replace, exchange, or credit such non conforming goods. **IN NO EVENT SHALL DEW BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.**

17. **Limited Liability.** DEW shall not be liable, under any circumstances, to Buyer or to any other third person or entity with respect to any subject matter of this Order, under any equity, common law, tort, contract, estoppel, negligence, strict liability or other theory, for any (a) incidental, special, punitive, consequential or indirect damages or (b) damages resulting from loss of sale, business, profits, data, opportunity or goodwill, even if the remedies provided for in this Order fail of their essential purpose and even if the party has been advised of the possibility of any of the foregoing damages, or (c) for any damages due to the portion of the goods provided by Buyer. **IN NO EVENT SHALL DEW AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE EXCEED THE PAYMENT, IF ANY, RECEIVED BY DEW FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE.**

18. **Payment.** Buyer agrees to pay DEW the prices set forth in this Order. Payment terms are thirty (30) days from the date of invoice. Extended payment terms are available, pending DEW credit manager approval, and are subject to additional charges.

18.1. All orders are subject to management approval and periodic review of credit and payment terms, which may be modified by DEW on reasonable notice for cause. A late payment charge of one and one-half percent (1½ %) per month (annual rate of 18%) will be added to past due accounts. Buyer shall pay all reasonable attorneys' fees, collection costs and other expenses incurred by DEW for collection of past due invoices.

19. **Setoff.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by DEW by reason of any counterclaim arising out of this Order or any other transaction with Buyer.

20. **Indemnification.** Buyer shall indemnify and hold harmless DEW, its owners, parents, affiliates, subsidiaries, officers, directors, employees, and agents, from any and all liability, loss, expense (including reasonable attorneys' fees and costs incurred by DEW) with respect to (a) claims of misuse of proprietary information, and infringements of patents, trademarks or copyrights based on designs, drawings, Specifications or other information which Buyer provides to DEW or which are developed by DEW or others in conjunction with and accepted by Buyer (b) any damage or liability claimed by a third party, arising from the design, manufacture, integration or usage of a product that alone or as a component in an assembly, is alleged or proved to have caused injury or damage, (c) any damage or liability, arising from the portion of the goods supplied by Buyer, (d) any damage or liability with respect to Buyer's failure to comply with all applicable foreign, U.S. federal, state or local laws, ordinances, rules, orders and regulations, including without limitation U.S. export control laws and any regulations and/or orders thereof or failure to provide DEW adequate information related thereto, and (d) any other breach of Buyer's obligations hereunder.

21. **Intellectual Property.** Any invention or intellectual property first made or conceived by DEW in the performance of this Order or which is derived from or based on the use of information supplied by Buyer not otherwise subject to a confidentiality agreement between the parties, shall be the property of DEW and Buyer shall execute such documents necessary to perfect DEW title thereto. Buyer agrees that it shall not obtain any grant, option, or license to any patent, trade secrets or other intellectual property rights now or hereafter held by

DEW. Buyer further agrees it shall not decipher, decompile, disassemble or reverse engineer any of the Goods sold hereunder.

22. **Insurance.** Buyer shall carry and maintain insurance of the type as follows: a) Worker's Compensation and Employers' Liability Insurance as required by applicable state statutes; b) commercial general liability and umbrella liability insurance, minimum per-occurrence limit, general aggregate limit, and products completed operations aggregate limit of \$1,000,000; c) comprehensive automobile liability insurance with limits not less than \$1,000,000; and d) commercial property insurance that shall cover the replacement cost of the property insured. All insurance policies shall contain language waiving all subrogation rights against DEW. Buyer shall provide to DEW Certificates of Insurance upon request and shall name DEW as an additional insured. Neither the failure of Buyer to comply with any or all of the insurance provisions of this Order, nor the failure to secure endorsements on the policies as may be necessary to carry out the terms and provisions of this Order shall be construed to limit or relieve Buyer from any of its obligations hereunder.

23. **Tooling.** Tooling DEW requires to perform its obligations under this Order shall remain the property of and in the custody of DEW and Buyer shall have no ownership rights therein unless otherwise agreed to in writing signed by an authorized representative of DEW. Tooling will be reserved for exclusive use in serving Buyer. When tooling has not been used for Buyer for at least three years, DEW reserves the right to scrap such tooling without notice.

24. **Lien.** DEW shall have a lien for any amounts owed by Buyer to DEW attaching to all of Buyer provided tooling, molds or other property designed, manufactured, fabricated or otherwise used by DEW.

25. **Subcontractor.** DEW expressly reserves the right to subcontract all or part of this Order without the consent of the Buyer.

26. **Assignment.** DEW reserves the right to assign any of its rights or obligations hereunder. Buyer shall not assign its rights or obligations hereunder without the prior written consent of DEW.

27. **Buyer Reschedules.** Unless otherwise stated in the Offer, all goods ordered hereunder shall be deliverable within twelve (12) months of the date of this Order. In the instance that Buyer purchases a quantity of product less than the ordered quantity, Buyer shall pay for the shipped quantity at the recalculated unit price based upon such shipped quantity, and the balance of this Order shall be cancelled. Buyer initiated changes in delivery schedule must be agreed to in writing in advance by DEW and will incur the following MINIMUM fees (expressed as a percentage of the rescheduled shipment's value): Within the same shipping month = 0%, 1 to 3 months = 2% per month, 3 to 6 months = 3% per month. Rescheduling requests exceeding six (6) months or requests to place an order on indefinite "HOLD" will be treated by DEW as a termination under Section 28 without prejudice to any other rights DEW may have under this Order.

28. **Termination.**

28.1. Either party shall have the right to terminate this Order upon a material breach of any terms and conditions stated herein. The non-breaching party shall give the breaching party written notice of the breach, the breaching party will have ten (10) days after receipt of the written notice to cure such breach or present the non-breaching party with a plan to cure the breach. In the event that DEW finds that Buyer has breached any other order or contract with DEW, DEW may terminate this Order, in whole or in part. Buyer, however, remains liable under this Order in the event of such termination by DEW.

28.2. DEW shall be entitled to payment for all work performed through the date of termination, including the payment for all Work in Progress ("WIP").

28.3. DEW has the right to terminate this Order, after giving Buyer three (3) days written notice of such termination, in the event Buyer makes, or it reasonably appears it shall make, an assignment for the benefit of creditors, is subject to any voluntary or involuntary provincial or federal receivership, insolvency or bankruptcy proceedings, becomes unable, or admits in writing its inability, to meet its obligations as they mature, fails to give adequate assurances of its ability to perform, or are dissolved or liquidated.

29. **Non-Waiver/Severability.** DEW waiver of any right under this Order shall not constitute a waiver of such right or any other right on any other occasion. In the event any provision of this Order is determined to be invalid, such invalidity shall not affect the validity of remaining portions of this Order, and the parties shall substitute for the invalid provision a provision that most closely approximates the intent and economic effect of the invalid provision.

30. **Independent Contractors.** The relationship of the parties established under this Order is that of independent contractors and neither party is a partner, employee, agent or joint venture of or with the other and nothing in this Order shall preclude DEW from contracting to provide similar goods or services for others.

31. **Buyer Supplied Items.** From time to time, Buyer may supply DEW with items to incorporate into goods sold under this Order. DEW shall use reasonable measures to protect and preserve items provided by Buyer and will only be liable for replacement of such items if lost, destroyed or rendered useless due to DEW gross negligence. Unless otherwise agreed to by the parties, any items of personal property supplied by Buyer to DEW related to this Order will be returned to Buyer upon expiration of this Order, as received less normal wear and tear. Buyer warrants that any items provided hereunder will comply with all applicable federal, state and local laws and regulations. Buyer further warrants that supplied components meet all performance, specification and inspection criteria.

32. **Survival.** The provisions of this Order that, by their sense and context, are intended to survive performance by either or both parties shall also survive the completion, expiration, termination or cancellation of this Order.

33. **Taxes.** Buyer is responsible for the payment of all taxes associated with the goods and services provided hereunder, including without limitation, sales, use, rental, personal property and any other taxes.

34. **Excusable Delays.** DEW shall not be liable for damages (including but not limited to consequential or incidental damages) or delays in performance resulting from causes beyond its control. Such causes include, without limitation, fire, flood, earthquake, explosion or other casualty or accident, strikes or labor disputes, inability to procure parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirement of any government agency, or any other act or condition whatsoever beyond the reasonable control of the party. Should DEW experience an excusable delay, it shall cooperate with the Buyer in reasonable ways to minimize the impact of such circumstances.

35. **Modification and Merger.** The parties agree that this Order shall be modified only by further written agreement by the parties. This Order supersedes all prior oral and written communications between the parties to this agreement.

36. **Confidentiality.**

36.1. Buyer agrees that it will not disclose the contents of this Order to any unrelated party without the advance written consent of DEW.

36.2. To the extent that the work under this purchase order/contract requires the exchange of confidential or proprietary business or financial information, after receipt thereof, the nondisclosing party shall treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, including its corporate parent, unless specifically authorized by the disclosing party in writing. The foregoing obligations, however, shall not apply to information which:

36.2.1. At the time of receipt by the nondisclosing party, is in public domain;

36.2.2. Is published after receipt thereof or otherwise becomes part of the public domain through no fault of the nondisclosing party;

36.2.3. The nondisclosing party can demonstrate the information was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the disclosing party;

36.2.4. The nondisclosing party can demonstrate was received by it from a third party that did not require the nondisclosing party to hold it in confidence.

36.3. The nondisclosing party shall obtain the written agreement, in a form satisfactory to the disclosing party, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within the nondisclosing party's organization directly concerned with the performance of the purchase order/contract.

37. **Compliance with Laws.** The parties represent and warrant that each shall comply with all applicable standards, provisions, and stipulations of all pertinent foreign, Canadian, Provincial and local laws, rules, regulations, ordinances, and orders. In addition, each party shall, at all times, act in a lawful manner and shall not use monies associated with this Order to influence government officials.

38. **Disputes.** The parties agree to resolve any questions, claims or disputes arising from or relating to the Order for Goods sold hereunder through good faith negotiations between executives who have authority to settle all matters. In the event the parties are unable to resolve the matter fully, the parties agree that, as a last resort, either party may commence litigation in accordance with Paragraphs 39 and 40 below.

39. **Choice of Law.** The laws of the Province of Ontario shall govern this Agreement, notwithstanding conflict of laws. If an arbitrator or court determines that terms and conditions in addition to those contained in this Offer should be included in interpreting the agreement between the parties, then notwithstanding any contrary Ontario law, the parties agree that any different terms and conditions shall be interpreted under Article 2 of the Uniform Commercial Code, section 2-207(2). The parties elect not to be bound by the United Nations Convention on Contracts for the International Sale of Goods.

40. **Venue and Jurisdiction.** The courts of the Province of Ontario shall have exclusive jurisdiction over all disputes and controversies arising out of this Order. Venue shall be proper in Ottawa, Ontario.