



March 17, 2020

TERMS AND CONDITIONS OF SALE – LW-001

1. General

- a. By placing its order, Buyer acknowledges that it has read and have accepted these terms and that no representations, understandings, conditions, or agreements have been made or relied upon in the making of this proposal other than those specifically set forth herein.
- b. LaunchWorks, LLC, (hereinafter referred to as LW) reserves the right to change specifications, prices and availability without notice. Every effort will be made to inform Buyer of any changes that are required as early as possible.
- c. Some or all parts of the terms and condition may be amended or superseded by an individual Services Agreement.
- d. Any quotations submitted by LW, without receipt, review and acknowledgement by LW of the applicable testing specifications and drawings, shall be estimates only, and are subject to revision.
- e. Unless expressly otherwise provided, all quotations shall expire thirty (30) days from the date of issue.

2. **Storage of Goods.** In the event that Buyer is unable or unwilling to accept delivery of goods at time of completions and/or shipment, LW shall invoice Buyer for the full purchase price as if shipment had been made. If LW is able to store the goods in its own facilities, LW shall the right to impose on Buyer a reasonable charge for handling and storage for the period of such storage. Buyer shall pay LW for cost of storing the goods, including a reasonable charge for storage if LW stores the goods on its property. Goods held for Buyer under this provision shall be held by Buyer's sole risk. LW shall not be responsible for any loss or damage to the goods during such storage, and in no event shall LW be liable for loss of use or for any indirect incidental, or consequential damages resulting from any damage or loss to the goods while stored by LW, or by any other entity at LW's request, on Buyer's behalf.

3. **Force Majeure.** Schedules are quoted in good faith based on the information supplied by Buyer to LW, but LW shall not be liable for delays in delivery occasioned by force majeure or any cause beyond its control, including but not limited to war, civil disturbances, acts of terrorism, fire, flood, earthquake, windstorm, acts or defaults of common carriers, governmental laws, epidemics or the threat thereof, pandemics or the threat thereof, acts or regulations or any other occurrences of any character reasonably beyond the control of LW, whether or not similar in character to the foregoing, beyond LW's control. Any such delay shall result in a corresponding extension of delivery time.

4. Warranties; Remedies.



- a. With respect to testing services, if applicable to the scope of work, LW only warrants (1) that at the time of delivery, any services provided by LW pursuant to the quotation have been performed with reasonable diligence, (2) that at the time of delivery, any test requested by Buyer and provided by LW pursuant to this contract has been carefully conducted and the information contained in the report of such test is true and accurate to the best of LW's knowledge. Buyer shall give written notice to LW of any breach of these warranties within 1 year after delivery and no claims may be brought against LW for such breach unless such written notice thereof is given within such 1-year period.
- b. With respect to the supply of goods, if applicable to the scope of work, LW warrants that at the time of shipment to Buyer the goods shall be free of defects in workmanship and material under normal use and service and shall conform to contract specifications and be within the limits and sized published by LW, subject to LW's standard tolerances for variations. LW shall have no liability to Buyer if Buyer's purchase order omits a specification and LW fills the order using goods that substantially conform to a standard or customary specification. In no event shall LW be liable for any defective good if examination discloses that the good has been taxed beyond its normal capacity of the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. **Notwithstanding anything herein to the contrary, all manufacturing performed by LW with the use of LW's equipment and facilities under the order, whether conducted by LW or Buyer's personnel, shall be at the risk of Buyer insofar as loss or destruction of or damage to Buyer's property is concerned during such manufacturing and LW shall not be liable for loss of or damage to Buyer's property occurring during such manufacturing.**
- c. All remedies of LW herein are not deemed exclusive but shall be cumulative and in addition to all other remedies permitted by law or equity. No failure by LW to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by LW preclude any other further exercise thereof.
- d. THE EXCLUSIVE REMEDY OF THE BUYER UNDER THIS WARRANTY AND THE LIMIT OF LIABILITY OF LW FOR ANY AND ALL LOSSES, INJURIES, AND DAMAGE OF ANY KIND OR NATURE WHATEVER TO PERSON OR PROPERTY (INCLUDING CLAIMS BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, OR OTHERWISE) SHALL, UPON AGREEMENT BY BOTH PARTIES, BE FOR LW EITHER TO RE-PERFORM OR REPLACE THE TESTS/SERVICES OR PRODUCT, OR TO MAKE AN EQUITABLE ADJUSTMENT IN THE PRICE PAID BY BUYER FOR SUCH TESTS/SERVICES OR PRODUCT.
- e. IN NO EVENT SHALL LW BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND TO PERSON OR PROPERTY.



THE PARTIES EXPRESSLY AGREE THAT THIS DISCLAIMER SHALL REMAIN IN EFFECT IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- f. THE WARRANTY IN THIS SECTION 4 IS TO THE EXCLUSION OF ALL OTHER WARRANTIES, CONDITIONS AND LIABILITIES WHEREVER EXPRESSED OR IMPLIED AND WHETHER ARISING IN CONTRACT, COURT OR BY STATUTE OR OTHERWISE.

5. Orders; Pricing

- a. Buyer shall be responsible for the actual cost of transportation of Buyer's property to and from LW's plant.
- b. In the event Buyer shall become insolvent or make a general assignment for the benefit of creditors, or files or has been filed against it a petition in bankruptcy or for reorganization, or pursues any other remedy under law relating to the relief of debtors, or in the event a receiver of Buyer's property or business is appointed, LW may, at its option, without notice to Buyer, terminate its performance under the quotation and treat Buyer as being in default and declare all outstanding amounts payable to LW to be immediately due and payable.
- c. The acceptance by LW of any order is contingent on LW's approval of Buyer's credit in LW's sole and absolute discretion. The payment terms are as specified in the quotation. Current delinquencies from prior orders may suspend or void any previously approved credit. If, in LW's sole and absolute discretion, Buyer's credit at any time is unsatisfactory, then at LW's option the terms of payment provided herein may be altered, the contract terminated without liability to LW and/or performance may be suspended pending receipt of satisfactory security. Any overdue payments are deemed to be delinquent and will bear interest at the rate of one and one half percent (1.5%) per month. In the event LW engages the services of any collection agency or attorney to collect such amounts, Buyer agrees to pay reasonable fees and costs incurred by LW, whether or not suit is brought.
- d. Prices based on the use of government and/or Buyer-furnished materials are subject to revision in the event that such material is not made available in a timely manner. Proposed delivery schedules are also contingent upon timely receipt by LW of the aforesaid government and/or Buyer-furnished material.
- e. Prices quoted are net (Ex. Works shipping point), and do not include sales, use, excise or similar taxes. Any tax imposed by federal, state, or other governmental authority on the sale of merchandise or services referred to in this quotation shall be paid by Buyer in addition to the quoted price. The amount of any present or future sales, use, excise or similar tax applicable to Buyer's order shall be paid by Buyer or Buyer shall provide LW with a tax-exempt certificate acceptable to the taxing authorities.
- f. All accepted orders may be cancelled or terminated by Buyer only upon written consent of LW and payment by Buyer to LW of a sum to be set by LW which as determined by LW fairly compensates LW for materials, labor and engineering



expenses occurred, if applicable, plus a reasonable profit for the percentage of the work completed, if applicable.

- g. LW's acceptance of any order by Buyer is expressly conditioned on acceptance by Buyer of the terms and conditions set forth herein. LW shall not be bound by any terms or conditions of Buyer's purchase order which are additional to or different from the terms and conditions hereof. Telephone orders are accepted by LW for the convenience of the customer, and every effort is made to obtain complete and accurate information before beginning work; but, the risk of a telephone order is on Buyer. If the information contained in any confirming purchase order is not completely in agreement with LW's understanding of the telephone order, then the terms of the telephone order, then the terms of the written LW quotation shall govern.
 - h. If a budgetary price is given, it is to assist in Buyer's preliminary planning only and must not be construed as a firm price until it has been converted in writing to a firm price by LW.
 - i. LW reserves the right to correct all typographical or clerical errors which may be present in the prices or specifications in the quotation, both before and after acceptance.
6. **Inspection of Goods.** Buyer agrees to inspect goods immediately upon receipt and to give written notice to LW of the precise nature of any quantity objection or claim that the goods breach any warranty provided hereunder. Such written notice shall be given (a) within fourteen (14) days or receipt if the claim is to quantity and (b) within thirty (30) days if the claim is the breach of warranty. LW shall thereupon be afforded a prompt and reasonable opportunity to inspect the goods. If Buyer shall fail to give such notice or provide such opportunity to inspect, the goods shall be deemed to conform with the terms and Buyer shall be bound to accept and pay for the goods in accordance with the terms of the contact. Buyer expressly waives any rights Buyer may have to revoke or refuse acceptance after such of the aforesaid fourteen (14) or thirty (30) day periods as may be applicable. If Buyer provides timely notice and reasonable opportunity to inspect then (1) if the claim is the shortage in excess of ten percent (10%) of the entire order, Buyer may require LW to make up the shortage within a reasonable time of LW's receipt of the notice: and (2) if the claim is for breach of warranty, LW may, at its option, either repair or replace said nonconforming goods or repay the price thereof. If LW requests the return of the nonconforming goods, the obligations hereunder for breach of warranty shall not arise unless the goods have returned to LW within thirty (30) days after such request is made. Buyer shall bear all costs of shipping and installing any replacement goods. The aforesaid obligations of LW to correct deficiencies in quantities in excess of ten percent (10%) and to repair or replace defective or nonconforming goods or repay the purchase price thereof is expressly agreed by the parties to be the limit of LW's liability and Buyer's sole exclusive remedy for quantity deficiencies and breach of warranty.

United States

123 Brimbal Ave.
Beverly, MA 01915
(T) 1. 978-338-3045



7. Testing Services (to the extent applicable to the scope of work)

- a. LW is not obligated to perform any additional services, including repeat testing, not specifically covered by LW's order acknowledgment, without additional compensation to be mutually agreed upon. The prices set forth therein are valid only for the purposes of this procurement and shall not be binding upon LW as the basis for pricing subsequent or repeat testing. Any details or breakdowns of the prices quoted therein are provided for information purposes or for the establishment of bidding schedules, and are not binding upon LW as the basis for pricing increments of the total task or for pricing subsequent repeat testing, unless so specified.
- b. If Buyer should disagree for any reason with the results or conclusion of the testing, and requires additional work for verification, LW shall be entitled to the reasonable value as agreed to by both parties of the additional work involved.
- c. Buyer agrees to provide test specimens, and required technical data, where applicable, in order to permit LW to proceed on a timely basis after receipt of Buyer's order. Unless otherwise specified, the quoted prices are based on receipt of test specimens and required data within thirty (30) days after receipt of order unless otherwise agreed. In the event of a delay in the commencement of work, in excess of thirty (30) days or such other term mutually agreed upon, occasioned by the failure of Buyer to furnish required test specimens or any other delays or failure to perform on the part of Buyer, the prices herein set forth shall be subject to review and revision by LW, and as agreed to by Buyer in writing. Notwithstanding any other provisions of this order to the contrary, LW shall not be required to fulfill its obligations under the order in the absence of Buyer supplying LW the specimens and technical data contemplated hereunder.
- d. If for any reason beyond LW's control, the testing program is interrupted for a period of thirty (30) days at Buyer's direction, the completed portion of the work may be billed to Buyer and shall be due on the basis of the normal terms of payment as set forth below.
- e. Property belonging to Buyer is preserved and protected while under the control of LW. This includes test specimens, product or materials issued to LW in support of test activities, equipment consigned to LW for its use to perform testing and customer intellectual property. **Notwithstanding the above, all services furnished by LW and all tests performed with the use of LW's equipment and facilities under the order, whether conducted by LW or Buyer's personnel, shall be at the risk of Buyer insofar as loss or destruction of or damage to Buyer's property is concerned during such tests and LW shall not be liable for loss of or damage to Buyer's property occurring during such tests.** If the work to be performed hereunder is directly or indirectly attributable to a contract on behalf of any agency of the United States Government, LW's liability for damage, loss, or injury to test specimens or other equipment furnished by Buyer shall be governed by the provisions of DAR (ASPR) 7-104.24 subparagraph (g), as applicable to negotiated fixed priced contracts. For purposes of applying DAR (ASPR) 7-104,



24 subparagraph (g) hereto, all references therein to “Contractor” shall be construed to mean “LW”, and to “Government-furnished property” shall be construed to mean “property furnished by Buyer.”

8. **Indemnification.**

- a. BUYER ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD LW HARMLESS AGAINST ALL CLAIMS AND LIABILITY (INCLUDING LIABILITY BASED ON A CLAIM THAT LW IS NEGLIGENT OR STRICTLY LIABLE) ARISING: (1) OUT OF ANY PROPERTY MADE IN WHOLE OR IN PART FROM THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT, AND (2) AS A RESULT OF USE OR POSSESSION OF THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT. Any technical advice furnished by LW, with respect to any use of the goods by Buyer, shall not affect the limitations on LW’s warranties or Buyer’s agreement in indemnity as set forth above.
 - b. Buyer shall indemnify, defend and hold LW harmless against any expenses, damages, cost or losses resulting from any suit or proceeding brought for infringement of patents or trademarks or unfair competition (1) relating to the use or sale of any LW goods in any combination, method, or process and/or (2) arising out of compliance by LW with Buyer’s designs, specifications or instructions.
 - c. In the event that an agent or employee of Buyer is injured while on LW’s property, Buyer agrees to defend indemnify and hold LW harmless from and against any and all liability, loss, damages, outlay and expense resulting from the incident causing the injury.
 - d. Unless otherwise expressly provided, LW shall retain title to and possession of any models, drawings, work instructions, patterns, dies, molds, jigs, fixtures and tools made for or obtained for the furnishing of the contract.
9. **Assignment.** Buyer shall not assign any rights or delegate any duties under the contract without the express written consent of LW.
10. **Limitation of Liability.** Buyer agrees that any action of any kind by the Buyer against LW must be commenced on or before the first anniversary of the date on the right, claim, demand or cause of action shall have first occurred.
11. **Governing Law.** These terms and conditions shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts in the United States and its courts shall have non-exclusive jurisdiction.