	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 1 of 15

1. Introduction: This Purchase Order, hereinafter “Order” is subject to the following terms and conditions. By acknowledgement of this Order, or Seller’s commencement of performance, Seller shall have agreed to and accepted said terms and conditions. Upon acceptance, this Order is the complete and exclusive statement of the terms and conditions of this agreement between Seller and TORCH and no change shall be binding on either party unless agreed to in writing and signed by an authorized TORCH contract or purchasing representative.


The following terms as used throughout this Order shall have the meanings as follows:

- i. “Buyer” and/or “TORCH” shall mean Torch Technologies, Inc. acting in accordance with the terms of this Order through an authorized TORCH contract and/or purchasing representative.
- ii. “Seller” shall mean the individual, company, or vendor through which TORCH has contracted with under this Order to furnish the goods and/or services described therein.
- iii. “Order” shall mean this agreement through which good and/or services have been contracted to be delivered by the Seller, to include the terms and conditions set forth herein or required by Federal Acquisition Regulation or legal statute to be flowed down from the applicable Prime Contract, as well as, all referenced documents, exhibits, and attachments.


This Order becomes a binding contract, subject to the terms and conditions hereof when reasonably accepted by acknowledgment or by commencement of performance. The acknowledgment copy of this Order shall be returned to TORCH in writing within five (5) business days from date of receipt. The terms and conditions contained in this Order cannot be added to, modified, superseded, or otherwise altered except by written instructions signed by an authorized representative of TORCH. TORCH terms and conditions as set forth in this Order shall take precedent. Unless expressly acknowledged in writing by TORCH, any additional, differing, or conflicting terms or conditions proposed by the Seller or provided as part of Seller’s written acknowledgement of the Order are objected to by TORCH and shall have no effect on this Order.

If this Order is issued pursuant to a US Federal Government Prime Contract, the following shall apply:

- i. Through acceptance of this Order, Seller certifies in accordance with FAR 52.209-6 that as of time of award of this Order, it is not debarred, suspended, or proposed for debarment by any US Government Agency. Seller shall sign and date the debarment statement included on this Order and return the signed acknowledgement to TORCH within seven (7) business days from date of receipt for any Order exceeding \$35,000.
- ii. For awards more than \$150,000, Seller certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf relating to the awarding of this Order or the Prime contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the Seller with respect to this Order or the Prime contract, the Seller shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The Seller need not report regularly employed officers or employees of the Seller to whom payments of reasonable compensation were made.
- iii. Defense Priority and Allocation System (DPAS) Orders containing a DPAS rating are certified for national defense, emergency preparedness, and energy program use, and Seller shall follow all provisions and requirements of the DPAS regulation (15 CFR 700). W r i t t e n acceptance of a rated order shall be received from Seller within 10 days for DX rated orders and 15 days for DO rated orders.
- iv. Notice of Defective Cost or Pricing Data:

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 2 of 15

- a. If Seller, its subcontractor, or prospective subcontractor fails to submit accurate, compete and current cost or pricing data, and, because of that failure, the US Government reduces the price of TORCH's prime contract, TORCH may recover from Seller an amount equal to the price reduction of TORCH's prime contract.
 - b. If, because of Seller's or its subcontractor's foregoing conduct, the US Government imposes a penalty on or charges TORCH interest, TORCH may recover from Seller the amount of that interest or penalty.
 - c. For the purposes of paragraphs (a) and (b) above, if TORCH is a higher tier subcontractor, US Government means the higher tier contractor and prime contract means the higher tier subcontract.
 - d. Seller will not raise as defenses the matters listed in FAR 52.215-10(c)(1) (AUG 2011) or FAR 52.215-11(d)(1) (AUG 2011).
2. **Changes:** By written revision to the Order, TORCH may, from time to time, make changes to drawings, designs, specifications, quantity, services and method of shipment. If any such change results in a substitution, increase or decrease in the price, or delivery of this Order, a revision to this Order regarding such shall be established by negotiation and mutual agreement. Changes shall not be binding upon TORCH except when specifically confirmed by written and signed revision to the Order by an authorized TORCH contract or purchasing representative. Information, advice, approval or instructions given by TORCH's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect either party's rights and obligations hereunder.
Seller shall make no modifications, revisions, or changes affecting the form, fit, or function of the items to be delivered without the written consent of an authorized TORCH contract or purchasing representative.
3. **Seller Contacts with Buyer's Customer and Other Vendors:** TORCH shall be responsible for all liaison and communications with TORCH's customer and TORCH's other vendors for the term of this Order. Seller shall not communicate with TORCH's customers or TORCH's other vendors regarding this Order, unless otherwise authorized in writing by TORCH. Notwithstanding the foregoing, nothing herein shall restrict the Government's rights to contract directly with a party to this Order.
4. **Compliance with Law:** Seller shall comply with all applicable Federal, State, County and Municipal laws or ordinances which in any manner affect the work to be performed by this Order. Seller shall require all of its representatives, agents and employees to observe and comply with said laws and ordinances and shall indemnify and hold TORCH harmless for all claims, damages and expenses arising from or based on the violation of any such law or ordinance by Seller or its representatives, agents or employees.
5. **Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama excluding its Conflict of Laws provisions. Should any term or provision of this Order be deemed invalid, that determination shall not affect the validity of any other provision. The courts located in the State of Alabama shall have exclusive jurisdiction of all matters arising under this Order, and each party hereby consents to the jurisdiction of such courts. To the extent that the laws, rules, and regulations for U.S. Government procurement are applicable, then the laws commonly referred to as U.S. Government contract law shall apply to this Order.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 3 of 15

6. **Order of Precedence:** The order of precedence of the documents contained within this order, as applicable, is as follows:

- i. Applicable Statute or Regulation
- ii. Applicable FAR/DFARS Clauses
- iii. Order
- iv. Order Terms and Conditions to include Torch Standard terms and conditions and those that may be incorporated herein as flow down terms and conditions of the Prime Contract
- v. Statement of Work (SOW)
- vi. Technical Specifications
- vii. Other Documents appended to the Order.

7. **Disclosure:** *NOTE: The provisions set forth herein are in addition to and do not alter, change, or supersede any written obligation contained under any Non-Disclosure Agreement between the Parties under this Order.*


For purposes of this clause “information” means all written, visual, and oral information and/or communications; data in any form, including, but not limited to oral, written, graphic, or electromagnetic forms; custom work product; embedded software and other technical information and specifications; designs; and drawings provided under this Order. Information provided by TORCH to the Seller shall remain the property of TORCH.

Seller shall not disclose information concerning work under this Order to any third party, unless such disclosure is necessary for the performance of the subcontract effort, in accordance with DFARS252.204-7000. No news releases, public announcement, denial or confirmation of any part of the subject matter of this Order or any phase of any program hereunder shall be made without prior written consent of TORCH. The restrictions in this paragraph shall continue in effect upon completion or termination of this Order and for such period as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized. Failure to comply with the provisions of this Clause may be cause for termination of this Order. If this Order is issued under a U.S. Government Contract, the Seller shall protect Unclassified Controlled DoD Information in accordance with DFARS 252.204-7012.

8. **Price:** The price of the supplies and/or services includes all applicable federal, state, and local taxes, duties, and fees, unless otherwise provided in this Order. Seller warrants that the prices, terms, warranties, and benefits contained in this Order are comparable to, or better than, those offered to any other of Seller's customers. TORCH shall receive the benefit prospectively, or retrospectively, if Seller offers any supplies or services included in this Order to any other customer at a lower price, more favorable terms, more favorable warranties, or more favorable benefits up to one year after completion of this Order.

9. **Certification of Independent Price Determination:** In relation to this Order, Seller certifies that the proposed prices were reached independently, without consultation, communication, or agreement with any others for restricting competition, and that the prices quoted have not been, nor will be, knowingly disclosed, directly or indirectly, by Seller, to any other offeror or competitor.

10. **Packing and Shipping:** Seller shall be responsible for safe packing in conformity with the carrier's tariff. Seller must number all packages within a shipment with the corresponding numbers shown on the invoice. Seller shall include a packing list bearing this Order number, Seller's order number, quantity, description of

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 4 of 15

items shipped, and any other information called for in the Order. One copy of the packing list shall be forwarded to TORCH, and one copy shall be included in Seller's invoice. No extra charge for packing will be paid unless specifically agreed to in writing by an authorized TORCH contract or purchasing representative.


Seller shall inform TORCH in writing within one (1) business day upon notice that shipping costs in this Order have increased from the amount accepted at time of Order and shall obtain TORCH's written approval for increase, in accordance with Item 2, Changes.

- 11. Notice of Delay:** Seller agrees to meet the delivery schedule as set forth in the Order. If the Seller encounters difficulty in meeting performance requirements; anticipates difficulty in complying with the Order Delivery schedule or dates; or has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance and/or delivery of this Order, the Seller shall immediately notify TORCH in writing, giving the pertinent details for review. This notification shall be informational only, and compliance with this provision shall not be construed as a waiver by TORCH of any delivery schedule or date or of any rights or remedies provided by law or under this Order.

NOTE: Any acceptance of revised and/or amended delivery schedule shall be in writing, see Item 2, Changes. Failure to comply with this term is material and may be grounds for termination.

- 12. Inspection/Acceptance:** Inspection and acceptance of all items purchased and delivered will be at destination, unless otherwise provided on the face of this Order, and will take place within a reasonable time of delivery by TORCH's previously specified representative or TORCH's customer and evidenced in writing. Affirmative acceptance is required. If the supplies or services fail in any respect to conform to this Order, TORCH may accept or reject the whole or any unit thereof. TORCH may reject supplies within a reasonable time (not less than 30 business days) after delivery. Acceptance does not of itself encumber any legal or equitable remedy for non-conformity. Acceptance may be revoked if it was made with the reasonable assumption that any non-conformity would be cured, the non-conformity was difficult to discover before acceptance, or is otherwise permitted by law or equity. Revocation of acceptance is equivalent to rejection. Upon rejection TORCH may, at its option, and in addition to any other available recourse return, at Seller's cost, the supplies for (a) a complete credit, (b) repair and return at no increase in price to TORCH, or (c) a comparable exchange approved by TORCH.

- 13. Remedy for Defect:** If any of the goods or services are found at any time prior to acceptance to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, TORCH (in addition to any other rights which it may have under warranties or otherwise) may at its option: (1) correct or have corrected the nonconformity at Seller's expense, or (2) reject and return such goods or services at Seller's expense, such goods or services not to be replaced without suitable written authorization from TORCH. If Seller fails to promptly remove such goods that are required to be removed, or to promptly replace or correct such goods, TORCH either (1) may by order or otherwise replace or correct such goods and charge to Seller the cost occasioned to TORCH thereby, or (2) may terminate this Order for default; and in either event may charge Seller the costs of damages occasioned to TORCH thereby. Unless Seller corrects or replaces such goods or services within the delivery schedule, TORCH may require the delivery of such goods or services at a reduction in price that is equitable under the circumstances. To defray the cost of shipping and handling, a service charge on rejected goods may be billed to Seller.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 5 of 15


14. Warranties: Seller warrants to TORCH and TORCH's customers that (1) the rates charged for the goods and/or services purchased pursuant hereto shall be no higher than Seller's current rates to any other customer for the same quantity and quality of such goods or services; (2) that all goods and services delivered pursuant hereto shall be new, unless otherwise specified, and free from defects in material and workmanship; (3) that all goods and services will conform to applicable specifications, drawings, and standards of quality and performance, and that all items will be free from defects in design and suitable for their intended purpose; (4) that the goods covered by this Order will be fit and safe for consumer use, if so intended. All representations and warranties of Seller together with its service warranties and guarantees, if any, shall run to TORCH and TORCH's customers. The foregoing warranties shall survive any delivery, inspection, acceptance, or payment by TORCH.

15. Counterfeit Work: The following definitions apply to this clause:

- i. "Counterfeit Work" means product or material that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- ii. "Suspect Counterfeit Work" means product or material for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the work part is authentic.

Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work under this Order. Seller shall only purchase products to be delivered or incorporated as material to TORCH directly from an Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distribution chain. Products or materials shall not be acquired from an independent distributor or broker unless TORCH has provided prior written approval. Seller shall immediately notify TORCH with the pertinent facts if Seller becomes aware or suspects that it has delivered Counterfeit Work or Suspected Counterfeit Work. When requested by TORCH, Seller shall provide OCM/OEM documentation that authenticates traceability of products or materials to the applicable OCM/OEM. This clause applies in addition to any quality provision, specification, statement of work, or other provision provided in this Order addressing authenticity of work. To the extent that such provisions conflict with this clause, this clause shall prevail. If Counterfeit Work or Suspected Counterfeit Work is delivered under this Order, Seller shall at its own expense, promptly replace such Counterfeit Work or Suspected Counterfeit Work with genuine work conforming to the requirements of this Order. Notwithstanding any other provision in this Order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Works or Suspected Counterfeit Works including without limitation TORCH's costs of removing Counterfeit Work, of installing replacement products or materials, of any testing necessitated by the re-installation of products or materials after replacement, and any fines or penalties assessed to TORCH as a result of the Counterfeit Work.

The Seller shall monitor the Government Industry Data Exchange Program (GIDEP) and shall act upon GIDEP reports which affect product or material delivered to TORCH. When Suspect Counterfeit Work or Counterfeit Work associated with this Order is discovered, the Seller shall submit a GIDEP Report and shall ensure Suspect Counterfeit Work or Counterfeit Work are not delivered to TORCH. Seller shall include this clause in all lower tier purchase orders and/or subcontracts for the delivery of items that will be included or furnished as product or material to TORCH.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 6 of 15

16. Invoices: Seller shall send invoices and direct all invoice/payment inquires to TORCH Accounts Payable via email to accounting@torchtechnologies.com. Seller's invoice shall include TORCH's Order number, Sellers order number as well as r the following in accordance with this Order and reference to the applicable Order Line Item: (1) description of item/service delivered, (2) quantity of item/service delivered, and (3) price. Seller invoice must match the packing list submitted with delivery as required for shipment acceptance. Payment terms are in accordance with the Order.

17. Insurance: Seller shall maintain, and cause its vendors and/or subcontractors to maintain, the insurance coverages that are specified in this Order, or if none are specified, the following minimum insurance coverage and limits will apply:

- i. Statutory Workers' Compensation coverage and Employer's Liability with a limit of \$500,000;
- ii. Commercial General Liability (including bodily injury and property damage, products/completed operations coverage and contractual liability coverage) with a limit of \$1,000,000 per occurrence.

When applicable to Seller's performance on this Order, Seller shall also maintain, and cause its vendors and/or subcontractors to maintain:

- i. Automobile Liability coverage with a limit of \$1,000,000 per accident, and
- ii. Professional Liability covering the services provided by Seller under this Order.


Upon TORCH's request, Seller shall provide TORCH with certificates of insurance evidencing such coverage.

When the Order requires Seller to perform work on TORCH's or TORCH's customer's premises, the following shall be adhered to:

- i. The Seller shall make all necessary precautions to prevent any injury to persons or damage to property during the progress of such work. The Seller agrees to indemnify TORCH against all loss or liability resulting from any act or omission by Seller, its employees, agents, vendors, or subcontractors.
- ii. The use of a non-US Citizen is prohibited without specific consent from TORCH. In addition, background checks such as those performed by employers during the hiring process [e.g., citizenship, personal identification (Social Security Number), criminal and credit] shall be performed by the Seller. Verification of these checks must be provided upon request.

18. Property: The rights and obligations of Seller with respect to any property furnished by TORCH shall be the same as those which Seller has with respect to Government Furnished Property under any provisions contained in this Order but shall in no event be less than reasonable care. These rights and obligations do not extend to risk of loss, wherein regardless of any provisions to the contrary Seller shall retain full risk of loss for any TORCH furnished property at all times. Upon Order completion, Seller shall return all such property to TORCH in the same condition in which it was received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into supplies delivered under this Order or consumed in the normal performance of work.

If this Order requires leased equipment/support, the Seller agrees to maintain any such equipment, in good working order. Furthermore, Seller agrees to furnish, when requested by TORCH, any necessary supporting service for the leased equipment supplied. This includes, but is not limited to, spare parts, hardware and software maintenance services, equipment modifications, or update documentation, for the normal use life of said equipment. This clause shall apply when such support services are necessary and applicable to the equipment furnished.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 7 of 15


19. Intellectual Property (to include invention): Seller agrees to assign, convey and transfer, and hereby does assign, convey, and transfer, to TORCH without requirement for further consideration, and furthermore agrees Torch shall be the sole owner of, all right, title, and interest in each and every invention, discovery, patent, copyright, work of authorship, trademark, development, and improvement and any other form of Intellectual Property conceived, authored, developed, reduced to practice, or otherwise originated by Seller and undertaken in the course of performing under this Order or that otherwise involve, or are reasonably related to the effort, or to TORCH's actual or demonstrably anticipated research or development of the effort, either solely or in conjunction with others during the term of Seller's engagement hereunder with TORCH (collectively, the "Works"). Upon request, Seller shall execute any additional documentation to further evidence TORCH's sole right, title and interest in the Works.

Furthermore, Seller hereby represents and warrants that Seller has the authority to enter into the Order, that the Seller's assignment is not a violation of any pre-existing obligation, and that the Seller's Works are free and clear of any claim, lien or other claim of right. It is recognized and agreed that for efforts originating under US Government Contracts, the Parties may be required to and shall grant licenses or other rights to the Government to inventions, data, and information under such provisions that may be contained in the US Government Prime Contract. Nothing herein is intended to, nor shall it limit or remove, any such US Governmental rights.

20. Tools, Materials, and other Information: All drawings, plans, specifications, calculations, reports, designs, sketches, drawings, blueprints, patterns, dies, molds, tools, gauges, equipment, or special appliances made or procured by Seller especially for producing the goods and/or services covered by this Order, unless otherwise provided, immediately upon manufacture or procurement shall become the property of TORCH. Unless otherwise provided on the face of this Order or by Change Order, any such items or materials or engineering data or other technical proprietary information furnished by and paid for by TORCH shall become consignment at Seller's risk, shall be used exclusively in the production of TORCH's products required by this Order, shall be subject to disposition by TORCH at all times, and upon demand, shall be delivered to TORCH. It is recognized and agreed that for efforts originating under US Government Contracts, the Parties may be required to and shall grant licenses or other rights to the US Government to inventions, data, and information under such provisions that may be contained in the US Government Prime Contract. Nothing herein is intended to, nor shall it limit or remove, any such US Governmental rights.

21. Export: This Order is subject to export control compliance as follows:

- i. The Seller shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the business is conducted pursuant to this Order, including but not limited to the Export Administration Regulations ("EAR") of the US Department of Commerce, and the International Traffic in Arms Regulations ("ITAR") of the US Department of State (collectively "Trade Control Laws").
- ii. Seller shall control the disclosure of, and access to, controlled items or technical data provided by TORCH or its customer(s) related to the performance of this Order in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by Seller, associated with Seller, under contract to Seller, Seller's supplier or Seller's subsidiaries) any export controlled item, data or services, without providing advance notice to TORCH and obtaining the requisite export and/or import authority.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 8 of 15


- iii. Subject to applicable Trade Control Laws, Seller shall provide TORCH with the export control classification of any commodity or technology including software.
- iv. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. Seller agrees to provide a copy of policies, procedures, and other documents reasonably requested by TORCH related to Seller's compliance with applicable Trade Control Laws upon request of TORCH.
- v. Seller shall promptly notify TORCH if Seller is or becomes listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Government entity.
- vi. Seller shall timely inform TORCH of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any Government agency concerning any actual or alleged violations in Seller's performance under this Order and shall comply with all reasonable requests from TORCH for information regarding such violations.

22. **Records:** Unless a longer period is specified within this Order or required by statute or regulation, Seller shall retain all records related to this Order for a minimum of four (4) years from the date of final payment received by Seller. Records related to this Order include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, Seller shall timely provide access to such records to the US Government and/or TORCH upon request.

23. **Assignments and Subcontracts:** Neither this Order nor any interest herein nor claim hereunder may be assigned by Seller, nor may all or a substantial portion of the Order be subcontracted by Seller without the prior written consent of TORCH.

24. **Interpretation of Order/Notice of Ambiguities:** This Order, and any and all identified writings or documents incorporated by reference herein or physically attached hereto, constitute the Parties' complete agreement. No other prior or contemporaneous agreements either written or oral shall be considered to change, modify, or contradict said Order. Any ambiguity in the Order will not be strictly construed against TORCH but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the Parties at the time of the Order. It is the obligation of the Seller to exercise due diligence to discover and to bring to the attention of TORCH at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts in or between the specifications and the applicable drawings or other documents incorporated by reference here. Failure to comply with such obligation shall be deemed a waiver and release of any and all claims for extra costs or delays arising out of such ambiguities, discrepancies, inconsistencies, or conflicts.

25. **Disputes:** Disputes associated with this Order which directly involve the US Government will be subject to and in accordance with the applicable FAR Disputes Clauses as noted in any Prime contract associated with this Order. Any claim, controversy or dispute concerning questions of fact or law arising out of or relating to this Order, or to the performance by either party, or to the threatened, alleged or actual breach by either party, which is not a Government Dispute or disposed of by mutual agreement within a period of thirty (30) days after one

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 9 of 15


party has provided written notice of the dispute to the other, shall be subject to Executive Level review by TORCH and Seller. Except as may be expressly set forth in this T&C Document with the Government Contracting Officer's express consent, the Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

Disputes not resolved through Executive Level review shall be submitted to binding arbitration administered and conducted by the American Arbitration Association. The claim, controversy or dispute shall be arbitrated before three arbitrators, one to be selected by each party and the third to be selected by the other two selected arbitrators. Any such arbitration shall be held in Madison County, Alabama. The parties agree that any remedy or relief granted shall be limited and therefore under no circumstances may the arbitrators make any award that includes any amount representing loss of profits, loss of business or any other incidental, special, consequential, or punitive damages. The decision of the arbitrators shall be final and conclusive upon the parties. The arbitrators shall apply the substantive and procedural law of the State of Alabama, without regard to any "choice of law" principles that would have the effect of applying any law other than that of Alabama, except to the extent of the clauses and other provisions incorporated herein by reference that are included in this Order by virtue of the requirements of the Federal Acquisition Regulations or other requirements applicable to Government procurement, which provisions shall be interpreted in accordance with the law governing Federal Government contracts. Judgment upon any award rendered by the arbitrators may be entered in any court of competent jurisdiction with the State of Alabama.

26. **Stop Work Order:** TORCH may, at any time, by written notice to Seller, require Seller to stop all or part of the work or delivery of supplies called for by this Order for a period of up to 90 days and for any additional agreed period ("Time Period"). Upon receiving such notice, Seller shall immediately comply with its term and take all reasonable steps to avoid incurring any additional costs associated with the stopped work during the Time Period. TORCH will, prior to the end of the Time Period, either cancel the Stop Work Order or terminate this Order in whole or in part as permitted by this Order. If a Stop Work Order is issued, TORCH shall modify the delivery schedule and/or price in this Order as it deems equitable under the circumstances, provided Seller requests such change within 15 days of the end of the Time Period.

27. **Termination: (For Convenience):** TORCH reserves the right to terminate this Order, in whole or in part, by written notice of termination for convenience, if determined to be in its own best interest. If the Order is so terminated, the parties' duties and obligations, including Seller's compensation, shall be equitably negotiated between TORCH and Seller. If the terminated Order is solely for services, TORCH shall be liable only for payment for services performed through the effective date of termination.

28. **Termination: (For Default):** TORCH may, subject to the paragraphs below, by written notice of default to the Seller, terminate this Order or any authorizing Sub-Task in whole or in part if the Seller fails to: (1) Deliver the supplies or perform the authorized services within the time specified in this Order, Sub-Task, or any extensions thereto; (2) Make progress, so as to endanger performance of this Order and/or authorized Sub-Task; (3) Perform any other of its obligations of this Order and/or authorized Sub-Task; (4) Conduct its operations in the normal course of business (including inability to meet its obligations as they mature); or (5) comply with any material term of this Order, or (6) becomes insolvent or makes a general assignment for the benefit of creditors; or if any proceedings are commenced by or against the Seller under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law or statute; or if a trustee, receiver, liquidator, or conservator for the Seller is applied for or appointed.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 10 of 15

TORCH's right to terminate this Order and/or any authorized Sub-Task, pursuant to this Termination clause, may be exercised if the Seller does not cure such failure within 10 calendar days (or more if previously authorized in writing by TORCH) after receipt of written notice from TORCH specifying the failure.

If TORCH terminates this Order or any authorized Sub-Task, in whole or in part, it may acquire, under the terms and in the manner TORCH considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to TORCH for all excess costs for those supplies or services. However, the Seller shall continue any work not terminated.

Except for defaults of its vendors or subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the Order arises from causes beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the default of any subcontractor of Seller at any tier, and if the cause of default is beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.


If this Order or any authorized Sub-Task is terminated for default, TORCH may require the Seller to transfer title and deliver to the Customer or TORCH, as directed by an authorized TORCH contract or purchasing representative, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials") that the Seller has specifically produced, configured or acquired for the terminated portion of this Order. Upon direction of TORCH, the Seller shall also protect and preserve property in its possession in which TORCH has a security interest.

TORCH shall pay the Order price for supplies and/or services performed and accepted. The Seller and TORCH shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree shall be governed as a dispute under the Disputes Clause. TORCH may withhold from these amounts a sum TORCH's procurement or contracts representative determines to be necessary to protect TORCH against loss or liability.

The rights and remedies of TORCH in this clause are in addition to any other rights and remedies provided by law or under this Order.

29. Indemnification: In the event any item purchased and delivered under this Order shall be defective in any respect whatsoever:

- a. Seller shall indemnify, defend and hold TORCH and TORCH's customers harmless from, and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (1) misconduct, negligence or fraud; (2) breach of any representation, warranty or covenant made herein, or (3) products or services including without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party.
- b. TORCH shall promptly notify Seller of any claim against TORCH that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent TORCH in, or to take charge of, any litigation in connection therewith.

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 11 of 15

c. **Infringement Indemnity.** (1) In lieu of any warranty by TORCH or Seller against infringement, statutory or otherwise, it is agreed that Seller shall defend, at its expense, any suit against TORCH or its customers based on a claim that any item furnished under this Order or the normal use or sale thereof infringes any U.S. Letters, patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given authority, information, and assistance at Seller's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to TORCH, shall obtain for TORCH and its customers the right to use and sell said item or shall substitute an equivalent item acceptable to TORCH and extend this patent indemnity thereto; (2) notwithstanding the foregoing paragraph, when this Order is performed under the Authorization and Consent of the U.S. Government to infringe U.S. Patents, Seller's liability for infringement of such Patents in such performance shall be limited to the extent of the obligation of TORCH to indemnify the U.S. Government.

30. Right of Access: Upon notice and for the duration of the contract, the supplier's facilities and operations may be surveyed by Torch, their customer, and regulatory authorities to the applicable areas of facilities and to applicable documented information, at any level of the supply chain. This may take place either before or after the placement of any Purchase Order, to verify the supplier has the capabilities necessary to supply a product of consistent quality. When appropriate, the Purchase Order will detail any additional rights to inspect the vendor's premises and applicable records by Torch, the customer, and/or appropriate authorities. Upon notice, audits may be conducted to determine compliance with purchase requirements and the requirements of this document.

31. Supplier Contribution: The supplier is responsible for ensuring their contribution to conforming product(s) and/or service(s) regardless of any outsourcing or involvement of sub-tier suppliers at any point in the supply chain. The supplier shall establish safe practices within its organization in order to protect the life and health of employees, contractors, subcontractors, and other personnel in supplier facilities to ensure their contribution to product safety. These practices will be implemented to prevent loss through injury, disablement, or damage to property, materials, equipment or the environment. The supplier shall also enforce the importance of ethical behavior within its workplace, as well as within any applicable element of its supply chain.

32. Additional Terms and Conditions: Certain Government terms and conditions shall apply if a Government contract number is stated on the face of this Order. These terms and conditions will be those in effect in the Government Prime Contract as of the date of the Order. In the event of any conflict or inconsistency between the above terms and conditions and the following Federal Acquisition Regulations (FAR) or Defense Federal Acquisition Regulation Supplement (DFAR), the FAR/DFARS shall apply. Applicable prime contract flow down clauses will be incorporated as part of the Order and shall be flowed down to any lower tier subcontractors as appropriate.

a All Orders include the following:

- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- 52.204-2 Security Requirements
- 52.204-9 Personal Identity Verification of Contractor Personnel
- 52.204-19 Incorporation by Reference of Representations and Certifications
- 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- 52.208-8 Required Sources for Helium and Helium Usage Data
- 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations



FORM

CONTROL NUMBER:

KT-FM-407

Purchase Order Terms and Conditions

REVISION: **4**

EFFECTIVE DATE: 09/30/2020

MANAGEMENT

PAGE 12 of 15

52.211-5	Material Requirements
52.211-15	Defense Priority and Allocation Requirement
52.211-17	Delivery of Excess Quantities
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items
52.214-26	Audit and Records – Sealed Bidding
52.214-27	Price Reduction for Defective Certified Cost or Pricing Data – Modifications – Sealed Bidding
52.214-28	Subcontractor Certified Cost or Pricing Data – Modifications – Sealed Bidding
52.215-22	Limitations on Pass-Through Charges—Identification of Subcontract Effort
52.215-23	Limitation on Pass-Through Charges
52.222-17	Non-displacement of Qualified Workers
52.222-21	Prohibition of Segregated Facilities
52.222-22	Previous Contracts and Compliance Reports
52.222-25	Affirmative Action Compliance
52.222-26	Equal Opportunity
52.222-41	Service Contract Labor Standards
52.222-50	Combating Trafficking in Persons
52.222-55	Minimum Wages Under Executive Order 13658
52.223-3	Hazardous Material Identification and Material Safety Data



FORM

CONTROL NUMBER:
KT-FM-407

Purchase Order Terms and Conditions

REVISION: **4**

EFFECTIVE DATE: 09/30/2020

MANAGEMENT

PAGE 13 of 15

- 52.223-5 Pollution Prevention and Right-to-Know Information
- 52.223-6 Drug-Free Workplace
- 52.223-7 Notice of Radioactive Materials
- 52.223-11 Ozone-Depleting Substances
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving
- 52.225-1 Buy American Act –Supplies
- 52.225-2 Buy American Act Certificate
- 52.225-8 Duty Free Entry
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.225-18 Place of Manufacture
- 52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States
- 52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran— Representation and Certifications
- 52.225-26 Contractors Performing Private Security Functions Outside the United States
- 52.227-9 Refund of Royalties
- 52.227-10 Filing of Patent Applications – Classified Subject Matter
- 52.227-11 Patent Rights – Ownership by the Contractor
- 52.227-13 Patent Rights – Ownership by the Government
- 52.227-14 Rights in Data-General (Alternate I, II, III, IV, or V)
- 52.228-3 Workers Compensation Insurance (Defense Base Act)
- 52.228-4 Workers’ Compensation and War-Hazard Insurance Overseas
- 52.228-5 Insurance – Work in a Government Installation
- 52.229-10 State of New Mexico Gross Receipts and Compensating Tax
- 52.230-2 Cost Accounting Standards
- 52.232-39 Unenforceability of Unauthorized Obligations
- 52.232-40 Providing Accelerated Payments to Small Business Contractors
- 52.234-1 Industrial Resources Developed Under Defense Production Act Title III
- 52.234-4 Earned Value Management System
- 52.236-13 Accident Prevention
- 52.237-2 Protection of Government Building, Equipment, and Vegetation
- 52.237-7 Indemnification and Medical Liability Insurance
- 52.242-1 Notice of Intent to Disallow Costs
- 52.244-6 Subcontract for Commercial Items
- 52.247-63 Preference for U.S.-Flag Air Carriers
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels
- 52.248-1 Value Engineering

b All Orders exceeding \$3,500 include the following (if applicable):


- 52.222-3 Convict Labor

c All Orders exceeding \$10,000 include the following (if applicable):

- 52.222-27 Affirmative Action Compliance Requirements for Construction

d All Orders exceeding \$15,000 include the following (if applicable):

- 52.222-20 Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000
- 52.222-36 Equal Opportunity for Workers with Disabilities

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 14 of 15

e All Orders exceeding \$25,000 include the following (if applicable):

- 52.225-3 Buy American Act –Free Trade Agreements – Israeli Trade Act
- 52.225-4 Buy American Act-Free Trade Agreements – Israeli Trade Act Certificate

f All Orders exceeding \$30,000 include the following (if applicable):

- 52.204-10 Reporting Executive Compensation and First Tier Subcontract Awards

g All Orders exceeding \$35,000 include the following (if applicable):

- 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

h All Orders exceeding \$150,000 include the following (if applicable):


- 52.202-1 Definitions
- 52.203-3 Gratuities
- 52.203-5 Covenant Against Contingent Fees
- 52.203-6 Restrictions on Subcontractor Sales to the Government
- 52.203-6 Restrictions on Subcontractor Sales to the Government Alternate I
- 52.203-7 Anti-Kickback Procedures
- 52.203-11 Certifications and Disclosure Re: Payment to Influence Certain Federal Officials
- 52.203-12 Limitation on Payment to Influence Certain Federal Transactions
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
- 52.215-2 Audit and Records Negotiation
- 52.215-14 Integrity of Unit Prices
- 52.219-8 Utilization of Small Business Concerns
- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation
- 52.222-35 Equal Opportunity for Veterans
- 52.222-37 Employment Reports on Veterans
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act
- 52.222-54 Employment Eligibility Verification
- 52.229-3 Federal State and Local Taxes
- 52.229-4 Federal, State, and Local Taxes (State and Local Adjustments)
- 52.233-2 Service of Protest
- 52.233-3 Protest After Award

i All Orders exceeding \$700,000 include the following

- 52.219-9 Small Business Subcontracting Plan

j All Orders exceeding \$750,000 include the following

- 52.215-12 Subcontractor Certified Cost or Pricing Data
- 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications
- 52.215-15 Pension Adjustments and Asset Reversions
- 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PBR) Other Than Pensions
- 52.215-19 Notification of Ownership Changes
- 52.215-20 Requirement for Cost or Pricing Data or Information Other Than Cost or Pricing Data
- 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications
- 52.230-3 Disclosure and Consistency of Cost Accounting Practices
- 52.230-6 Administration of Cost Accounting Standards

	FORM		CONTROL NUMBER: KT-FM-407
	Purchase Order Terms and Conditions		REVISION: 4
			EFFECTIVE DATE: 09/30/2020
		MANAGEMENT	PAGE 15 of 15

k All Orders exceeding \$5,500,000 include the following:

- 52.203-13 Contractor Code of Business Ethics and Conduct
- 52.203-14 Display of HotlinePoster(s)

l All Orders exceeding \$10,000,000 include the following:

- 52.222-24 Pre-award On-Site Equal Opportunity Compliance Evaluation

m All Orders include the follow DFAR clauses (if applicable):

- 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
- 252.203-7002 Requirement to Inform Employees of Whistleblower Rights
- 252.204-7000 Disclosure of Information
- 252.204-7008 Compliance with Safeguarding Covered Defense Information Controls
- 252.204-7009 Limitations on the Use or Disclosure of Third-Party Contractor Information
- 252.204-7010 Requirement for Contractor to Notify DOD If Contractor Activities Are Subject To Reporting Under The US-International Atomic Energy Agency Additional Protocol
- 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
- 252.204-7015 Disclosure of Information to Litigation Support Contractors
- 252.208-7000 Intent to Furnish Precious Metals as Government Furnished Material
- 252.211-7000 Acquisition Streamlining
- 252.211-7003 Item Identification and Valuation
- 252.212-7001 Contract Terms and Conditions Required to Implement Statutes Or Executive Orders Applicable To Defense Acquisitions Of Commercial Items
- 252.215-7004 Excessive Pass Through Charges
- 252.222-7000 Restrictions on Employment of Personnel
- 252.223-7002 Safety Precautions for Ammunitions and Explosives
- 252.223-7006 Prohibition on Storage and Disposal Of Toxic Hazardous Material
- 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
- 252.223-7008 Prohibition of Hexavalent Chromium
- 252.225-7004 Report of Intended Performance Outside the United States and Canada – Submission after Award
- 252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the United States
- 252.225-7007 Prohibition of Acquisition of United States Acquisition List Items from Communist Chinese Military Companies
- 252.225-7008 Restriction on Acquisition of Specialty Metals
- 252.225-7009 Restriction on Acquisition of Certain Articles containing Specialty Metals
- 252.225-7013 Duty Free Entry
- 252.225-7048 Export-Controlled Items

REVISION HISTORY

Revision	Date	Description	Approval
0	10/22/09	Initial Release	Document Approval Form
1	04/03/15	Update to P.O. Terms & Conditions	DCR 12
2	07/20/18	Update to P.O. Terms & Conditions	
3	07/08/19	Update to P.O. Terms & Conditions	
4	09/30/20	Update to P.O. Terms & Conditions	