



Subcontractor Terms and Conditions

North America

*CASL Surface Technologies Corp.; 1604 10 Street, Nisku, Alberta T9E0A7
Corrosion and Abrasions Solutions USA, LLC, 21430 Springbridge Drive, Houston, TX 77073
Thermal Spray Solutions, LLC 1105 International Plaza, Chesapeake, VA 233323*

These terms and conditions (these “Terms”) apply to all engagements made by or on behalf of each applicable above-listed affiliated company of Kymera International, LLC (as applicable, “Contractor”) for contracted services. As provided herein, acceptance of any purchase order and/or statement of work from Contractor by a subcontracting party (“Subcontractor”) is expressly conditioned upon Subcontractor’s acceptance of these terms and conditions. Attachment A to these Terms shall only be effective to the extent executed by both Contractor and Subcontractor.

1. EFFECT OF PRIME CONTRACT. Subcontractor acknowledges that these Terms are in accordance with and subordinate to an agreement between Contractor and a prime contractor (the “Prime Contractor” and, such agreement, the “Prime Contract”). All services provided under any Order by Subcontractor (“Services”) shall be compliant with and subordinate to the terms and conditions of the Prime Contract and the valid directives of the Prime Contractor. Upon request, Contractor shall furnish Subcontractor with reasonably necessary information regarding the Prime Contract to the extent Contractor is permitted to share such information. To the extent the Prime Contract is with the United States Government, these Terms are hereby modified by and incorporate by reference the additional Flow Down Provisions for Commercial Subcontracts and Purchase Orders provided by the Contractor in connection with the Order.

2. ALLOCATION OF COSTS. Except as amended on Attachment A, Subcontractor shall be responsible for furnishing and paying the expenses for the following in provision of the Services: (a) labor costs (including employees, subcontractors and other engaged individuals), (b) materials (including all supplies and products required to furnish the Services), (c) equipment (including all machinery, devices, accessories and safety equipment required to furnish the Services), (d) travel (including the delivery, transit and shipment of the resources described in (a) – (c) of this Article 2 to the work site).

3. LOCATION & TIMING OF PERFORMANCE.

(a) The location, scope and other material aspects of Subcontractor’s performance shall be set forth in the Order; provided, that any description of scope in the Order shall be superseded by the information set forth in a duly executed Attachment A to these Terms.

(b) Time is of the essence in fulfilling the Order. Failure to perform in accordance with the delivery schedule under the Order, if not excused in writing by Contractor, shall be a material breach of the Order. Contractor reserves the right to refuse or return at Subcontractor’s risk and expense shipments made in excess of Contractor’s Order or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.

(c) Subcontractor shall notify Contractor in writing immediately of any actual or potential delay in the performance of the Order. Such notice shall include a proposed revised schedule, but



such notice and proposal or Contractor's receipt thereof shall not constitute a waiver of Contractor's rights and remedies hereunder. Any charges, overages or fees charged to Contractor from the Prime Contractor due to Subcontractor's delay shall be paid in full by Subcontractor and Subcontractor shall be liable to reimburse Contractor for any such amounts deducted by Prime Contractor from Contractor's payment due to such delayed performance.

(d) If Subcontractor shall be unable to deliver as scheduled, Contractor may demand delivery by fastest way and charges resulting from premium transportation shall be prepaid by the Subcontractor.

(e) **INSURANCE.** Without limiting Subcontractor's duty to hold harmless and indemnify hereunder, Subcontractor shall, for the duration of the supply relationship and for a reasonable time period thereafter, maintain as a minimum the following insurance (except as modified in a duly executed Attachment A to these Terms) with respect to all work to be performed under the Order for the duration of the Order: (i) Workers' Compensation Insurance, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; (ii) Commercial General Liability Insurance including Premises Liability and contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$1,000,000 for any one occurrence; (iii) if Subcontractor's vehicles are used on Contractor's premises and/or used to accomplish work under the Order or otherwise on behalf of Contractor, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence; (iv) if Subcontractor or its permitted subcontractors have Contractor's materials or equipment in its care, custody or control, Subcontractor shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the value of such material; and (v) if Subcontractor is performing professional services on behalf of Contractor, Subcontractor shall maintain Professional Liability Insurance with a limit of no less than \$5,000,000 with worldwide coverage for risks arising from the supply relationship (including, without limitation, business liability insurance, expanded product liability insurance including coverage for costs of installation and removal, inspection and sorting costs, and applicable recall costs) and shall name Contractor as an additional insured on all such insurance policies; provided, that, if the applicable Prime Contract requires a higher limit of insurance, then Subcontractor shall be required to obtain such greater level of insurance to the Prime Contractor's satisfaction. Upon Contractor's demand therefore, Subcontractor shall provide Contractor with proof of insurance coverage.

4. **TERMINATION; SUSPENSION OF PERFORMANCE.**

(a) **For Convenience.** Contractor may, by notice in writing, terminate the Order or work under the Order, for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default, prior to the beginning of performance by the Subcontractor. In the



event of partial termination, Subcontractor shall not be excused from performance of the non-terminated balance of the Products or Services.

(b) **For Termination of Prime Contract.** Contractor may by notice in writing to Subcontractor, terminate any Order to the extent the related Prime Contract has been terminated by the Prime Contractor.

(c) **For Default.** Contractor may by notice in writing to Subcontractor, terminate the Order, in whole or in part, at any time if Subcontractor fails (i) to perform within the time specified herein or any extension thereof; or (ii) to perform any of the other provisions of the Order, or (iii) to make progress as to endanger performance of the Order, and in any case, does not cure such failure within a period of ten (10) days from its receipt of Contractor's notice. In the event of such a termination by Contractor due to default by Subcontractor, Subcontractor will support Contractor to the best of its abilities in Contractor's efforts to obtain replacement Products or Services, which support will include the granting of licenses to intellectual property rights to the extent such rights are necessary for the manufacture of the Products or the provision of the Services, such licenses to be granted on terms customary in the industry.

(d) **For Insolvency.** If Subcontractor ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Subcontractor, or a receiver for Subcontractor is appointed or applied for, or an assignment for the benefit of creditors is made by the Subcontractor, the Order shall automatically terminate without liability to Contractor, except for liability for deliveries previously made or for Products that are completed at termination and subsequently delivered in accordance with the terms of the Order.

(e) **Effect of Termination.** Upon termination of the Order, Contractor may procure, as it deems appropriate, products or services similar to those that were to be provided under the Order, and Subcontractor shall be liable to Contractor for the cost of such products or services.

(f) **Force Majeure.** Contractor shall not be liable for any failure to perform including failure to (i) accept performance of Services or, (ii) take delivery of the Products, caused by circumstances beyond Contractor's control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, terrorism, federal, state or local government action statute, ordinance or regulation, accident, labor difficulties or shortage, inability to obtain products, equipment or transportation or other incident(s) which makes performance impossible or impractical. If performance by Contractor is delayed three (3) or more months due to a force majeure event, either party shall have the right by written notice to the other to cancel the Order and, in such event, neither party shall be liable to the other for any losses or damages arising out of such cancellation.

5. INSPECTION; REJECTION; AUDIT.



(a) **Inspection.** All Products and Services and related documentation shall be subject to inspection and test at all reasonable times and places by the Contractor, and Contractor's customers before, during and after performance and delivery. If any inspection or test is made on the premises of Subcontractor or any of its suppliers, Subcontractor, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Notwithstanding the foregoing, inspection by Contractor or payment for the Products does not relieve Subcontractor of its warranty obligations, nor does it act as acceptance of the Products. With regard to numbers of pieces, weights and dimensions, the values determined by Contractor and the equipment used by Contractor for inspection of the Products shall be decisive, unless undisputable evidence to the contrary is available.

(b) **Audit Right.** Subcontractor (which, for the purposes of this Section, includes Subcontractor's suppliers) shall at any time, and after reasonable notice by Contractor (i) grant to Contractor, Contractor's customers and/or to any competent regulatory authority, unrestricted access to (or if requested by Contractor provide copies of) Subcontractor's books and records (including, without limitation, agreements and technical inspection and quality records, but excluding financial books and records) related to the Products or Services provided, wherever such books and records may be located (including third-party repositories), and (ii) provide Contractor, Contractor's customers and/or any such authority the right to access, and to perform inspection, test, audit or investigation at Subcontractor's premises, including manufacturing and test locations for the purpose of enabling Subcontractor to verify compliance with the requirements set forth in the Order in connection with the design, development, certification, manufacture, sale, use and/or support of the Products.

(c) **Rejection.** If any of the Products shall be found at any time to be defective in material or workmanship, in breach of warranty or otherwise not in strict conformity with the requirements of the Order, Contractor, in addition to such other rights, remedies and choices as it may have by contract or by law, at its option and sole discretion, may (i) reject and return such Products at Subcontractor's expense; (ii) require Subcontractor to inspect the Products and remove and replace nonconforming Products with conforming Products; or (iii) purchase replacement Products in. If Contractor shall elect option (ii) above and Subcontractor shall fail to promptly make the necessary inspection, removal and replacement, Contractor may, at its option, rework the discrepant Products and charge back the Subcontractor for the required work. Reimbursement for warranty claims will be, at Contractor's option, through Subcontractor credits, Contractor debits, or cash payments from Subcontractor to Contractor, executed no more than thirty (30) days after notification to Subcontractor, within the warranty period, of product failure.

(d) **First Article Inspection.** At Contractor's request, Subcontractor shall supply First Article Inspection Reports (FAIR) for the first shipment of any new Products or parts thereof. Whenever a drawing of a Product or part thereof is revised, a FAIR shall be again required for all characteristics affected in the revision.

(e) **Certificates of Conformance.** At Contractor's request, a Certificate of Conformance stating the component materials conform to all Order requirements that, if requested, shall accompany



each shipment. The Subcontractor shall have available for review all sub-tier certifications for products and processes that support the shipment.

6. PAYMENT; TAXES; SET-OFF.

(a) **Payment.** As full consideration for the Products and Services, and the assignment of rights to Contractor as provided herein, Contractor shall pay Subcontractor (i) the amount agreed upon and specified in the Order, or (ii) Subcontractor's quoted price on date of shipment (for Products), or the date Services were started (for Services), whichever is lower. Payment shall not constitute acceptance. Each invoice submitted by Subcontractor shall be provided to Contractor within ninety (90) days of completion of the Services or delivery of Products and shall reference the Order. Contractor reserves the right to return all incorrect invoices. Contractor shall receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after completion of the Services or delivery of the Products. Contractor shall pay the invoiced amount within ten (10) business days of Contractor receiving the money for such services from the Prime Contractor.

(b) **Set-Off.** Contractor shall be entitled at all times to set off any amount owing from Subcontractor to Contractor or any of its affiliated companies against any amount payable by Contractor.

(c) **Taxes Paid by Subcontractor.** Prices shall include, and Subcontractor shall be liable for and pay, all taxes imposed on or measured by the Order, except for applicable sales and use taxes that are separately stated on Subcontractor's invoice. Prices shall not include any taxes for which Contractor has furnished evidence of exemption. Where required by law, Contractor may deduct from any payments due to Subcontractor hereunder such taxes as Contractor shall be required to withhold and pay such taxes to the relevant tax authorities.

(d) **Retention.** Notwithstanding anything to the foregoing in this Section 6, Contractor shall be entitled to retain up to ten percent (10%) of the total price for Subcontractor's services until the Project Completion (as defined herein). Following Project Completion, Contractor shall remit to Subcontractor the retained portion of the consideration within five (5) business days. For purposes of these Terms, "Project Completion" means (a) the completion of all material work by Subcontractor, (b) the receipt by Contractor of a signed certificate of completion by Subcontractor, and (c) the inspection and final acceptance of all services under the Prime Contract by the Prime Contractor.

(e) **Additional Terms; Milestone Payments.** Any deviations from the payment terms set forth in this Section 6, including the establishment of payment terms based on the completion of certain milestones must be set forth in a duly executed Attachment A.

7. CONFIDENTIALITY AND PROPRIETARY RIGHTS.



(a) Subcontractor shall (i) keep confidential any proprietary and/or confidential information including without limitation any technical, process, product or financial information, capacity, production levels or production schedules, including any such information derived from or contained in any drawings, specifications, software or other data (“Confidential Information”) furnished by Contractor, (ii) shall not divulge, export or use, directly or indirectly, any such Confidential Information without obtaining Contractor’s express prior written consent, and (iii) shall not use such Confidential Information for purposes other than as authorized by Contractor. Subcontractor may not advertise its business relationship with Contractor, nor use Contractor’s trademarks, trade names, logos, or any other Confidential Information in Subcontractor’s advertising, promotional materials, or electronic communications (including but not limited to websites), without Contractor’s prior written consent. The Parties agree that Confidential Information includes all information provided by Prime Contractor to Contractor to which Subcontractor becomes aware, is provided or discovers in the course of performance.

(b) Contractor retains title and reserves all other intellectual property and other rights to the Confidential Information. Copies may be made only with Contractor’s prior written consent. Title to the copies passes to Contractor at the time such copies are created. Subcontractor hereby agrees that Subcontractor stores the copies on behalf of Contractor as bailee. Subcontractor agrees to properly store at its expense all documents and other objects, including copies thereof, that were made available to Subcontractor, to keep them in perfect condition, to obtain insurance for them and to return them to Contractor or destroy them, in each case upon Contractor’s request. Subcontractor shall confirm the complete return or destruction of the relevant object(s) in writing.

(c) Any intellectual property first made or conceived by Subcontractor in performance of the Order that was derived from or based on the use of Confidential Information or other information supplied by Contractor shall be considered to be the property of Contractor. Subcontractor agrees to assign and hereby assigns its entire right, title and interest in and to such intellectual property and Subcontractor shall execute such documents necessary to perfect Contractor’s title thereto.

(d) If Subcontractor breaches its obligations set forth in this Section 8, Subcontractor understands and agrees that monetary damages will not provide sufficient relief for said breach, and that Contractor is entitled to seek specific performance and injunctive relief against the Subcontractor as remedies for any such breach. Such remedies are not the exclusive remedies for a breach of these obligations, but are in addition to any and all other remedies available at law or equity.

(e) All drawings, tools, jigs, dies, fixtures, Products, equipment and other items supplied or paid for by Contractor shall be and remain the property of Contractor (“Contractor’s Property”), and Contractor shall have the right to enter Subcontractor’s premises and remove the Contractor’s Property at any time. Contractor’s Property shall be used by Subcontractor only in its performance hereunder. Subcontractor shall be responsible for the proper use of the Contractor’s Property and shall maintain the Contractor’s Property, provide adequate insurance for Contractor’s Property for the benefit of Contractor, and shall be responsible for all loss or damage thereto, except for normal wear and tear. Immediately upon Contractor's request and without payment of any kind,



Subcontractor shall return Contractor's Property, and shall comply with Contractor's instructions relating to its return, including the method and location for its return. Subcontractor shall be responsible for labor and other costs incidental to the return of Contractor's Property. Subcontractor expressly waives any right to additional notice or process relating to Contractor's exercise of its rights under this Section (e). Subcontractor waives, to the extent permitted by law: (i) any lien or other rights that Subcontractor might otherwise have on any of Contractor's Property, including molder's and builder's liens; and (ii) any objection to Contractor's repossession and removal of Contractor's Property for any or no reason, including bankruptcy or insolvency proceedings.

8. WARRANTY.

(a) Subcontractor warrants that prior to providing any Services or delivering any Products, Subcontractor fully understands the Contractor's and Prime Contractor's intended purposes. Subcontractor warrants that the Products and Services shall be: (a) free of any and all liens, claims, defects in title, encumbrances or other third-party claim, including but not limited to any claims of infringement or violation of a trade secret, (b) of merchantable quality, free from all defects in design and workmanship, and (c) fit for the particular purposes for which they are intended, and in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved by Contractor. All warranties under the Order shall be for the benefit of the Contractor, its successors, assigns, customers and the ultimate users of the Products and Services. Subcontractor shall make spare parts available to Contractor at Subcontractor's then-current price for a period of five (5) years from the last date of shipment of the Products.

(b) Subcontractor will reimburse Contractor for any damages caused by Subcontractor's breach of these Terms or by nonconforming Products or Services, including, without limitation: (i) cost incurred for replacement products or services; (ii) freight costs incurred to deliver replacement Products or to expedite shipments or to return Products to Subcontractor; (iii) costs associated with containing and correcting recalls or other large scale issues; and/or (iv) costs resulting from production interruptions; recall campaigns, or other corrective service actions.

(c) If a governmental agency of any country, state, province or municipality requires Contractor to conduct a product recall or field fix program, or Contractor voluntarily undertakes such an action, related to the Products, Contractor will notify Subcontractor on the later of: (i) within thirty (30) days of the start of such action or (ii) within ten (10) days of determining that the cause for such recall is Subcontractor and Subcontractor shall, at Contractor's option, either repair or replace related Products, and reimburse Contractor for any related costs and damages. In connection with a recall campaign, service action or other corrective action, the warranty shall be extended beyond the normal warranty duration and continue for such time period as may be dictated by Contractor or the government unit.

9. ORDER MODIFICATIONS; ASSIGNMENT; AMENDMENT.



(a) **Order Changes or Suspension.** Contractor shall have the right upon notifying the Subcontractor to suspend or make changes from time to time to the Order including without limitation to the Products or Services or delivery date. If any such change affects the cost of such Products or Services, an equitable adjustment shall be made, but any claim by the Subcontractor for adjustment shall be asserted within thirty (30) days from its receipt of such notice. Subcontractor may not change any specifications, manufacturing locations, subcontractors, suppliers, physical composition of, or processes used to manufacture the Products or provide the Services without prior approval in a signed writing from Contractor.

(b) **Assignment.** Subcontractor may not assign any rights or delegate any of its obligations hereunder without the prior written consent of Contractor nor use any subcontractor without prior written consent of Contractor, and any such attempted delegation or assignment or subcontracting shall be void.

(c) **Amendment.** Except as otherwise set forth in this Section 10, these Terms may not be amended except by a writing signed by the Contractor and Subcontractor expressly amending the terms hereto (including by means of a validly executed Attachment A to these terms).

10. INDEMNITY; LIMIT OF LIABILITY.

(a) Subcontractor shall be responsible for the actions and failure to act of all parties retained by, through or under Subcontractor in connection with the performance of the Order.

(b) Subcontractor shall, without limitation, indemnify, defend and hold Contractor and its affiliates and customers, and their respective officers, directors, employees and agents harmless from and against all claims and resulting costs, expenses (including reasonable attorneys' and related legal fees) and liability, which arise from claimed or actual infringement or violation of any trade secret or other intellectual property right, personal injury, death, damage to the environment or property loss or damage arising out of, related to, or caused by (i) Subcontractor's action or failure to act, (ii) the Products or Services, (iii) the infringement by the Products or Services of the intellectual property rights of a third party, (iv) the breach of any of these Terms, (v) any violation of law by Subcontractor, or (vi) any liability of Contractor under the Prime Contract due (in whole or in part) to Subcontractor's conduct, action or inaction.

(c) Should Contractor's use, or use by its customers, of any Products or Services be enjoined, be threatened by injunction, or be the subject of any legal proceeding based on the actual or alleged infringement on the intellectual property rights of a third party, Subcontractor shall, at its sole cost and expense: (i) substitute fully equivalent non-infringing products or services; (ii) modify the Products or Services so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for the benefit of Contractor and its customers the right to continue using the Products or Services; or (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Products or Services.



(d) Contractor's sole liability under the Order (including its termination, expiration, or cancellation) is to pay for the Products or Services actually delivered or provided in accordance with Section 3. **IN NO EVENT SHALL CONTRACTOR BE LIABLE TO SUBCONTRACTOR FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES DIRECTLY OR INDIRECTLY RELATED TO LOST PROFITS) ARISING OUT OF, OR IN CONNECTION WITH, THE ORDER, WHETHER OR NOT CONTRACTOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

11. COMPLIANCE WITH LAW, RULES, REGULATIONS AND CERTAIN POLICIES.

Subcontractor warrants that the Products and the Services shall be manufactured, sold, and delivered, as applicable, in compliance with all applicable laws, rules and regulations (“Laws”), including all (a) applicable environmental Laws, (b) hazardous material Laws, (c) human rights laws; (d) conflict mineral sourcing; (e) anti-bribery and corruption; (f) applicable import and export Laws; and (g) all Laws governing ethical business practices. Additionally:

(a) **Government Contracts.** If Contractor has issued the Order under a government Prime Contract, all applicable Federal Acquisition Regulation (FAR) clauses and similar applicable laws, regulations and rules are incorporated herein by reference, with the same force and effect as if they were given in full text, and shall be applicable to the Order.

(b) Import and Export Control Limitations.

- i. The Products, software and/or technology provided by the Subcontractor will not be sourced through or otherwise manufacture, transferred, diverted, directly or indirectly, in any country or territory sanctioned under U.S., UN, UK or EU laws (which includes the Crimea region of Ukraine, the so-called Donetsk People’s Republic (“DNR”) and the Luhansk People’s Republic (“LNR”) regions of Ukraine, Belarus, Russia, North Korea, Cuba, Iran and Syria) without prior authorization from the U.S. or any other applicable government.
- ii. The Products will not be sourced or manufactured, directly or indirectly, by any person or entity on any U.S., UN, UK or EU Government restricted party lists, including but not limited to, the Specially Designated Nationals (“SDN”) List, the Entity List, the Sectoral Sanctions List (“SSI”), or the Russia-related CAPTA and Entities Directives in violation of U.S., UN, UK or EU sanctions laws, or any other applicable countries’ laws and regulations.
- iii. The Subcontractor shall not source or manufacture product, directly or indirectly, from the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.



- iv. The Subcontractor shall undertake its best efforts to ensure that the purpose of paragraph (i) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- v. The Subcontractor shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of this Section 12.
- vi. If Subcontractor is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Subcontractor hereby certifies that it has and is currently registered with the U.S. Department of State Directorate of Defense Trade Controls (DDTC) and understands its obligations to comply with International Traffic In Arms Regulations (ITAR).
- vii. Subcontractor shall advise Contractor as to the defense article status of the Products and mark any technical data provided to Contractor in connection with the Products or Services to indicate if it is subject to ITAR controls. If any of the Products or technical data is subject to ITAR, Contractor may need to obtain an import license from DDTC, and in such instance, upon instruction from the Contractor, Subcontractor shall, at no expense to the Contractor, delay delivery of the Products and technical data until the Contractor shall receive any necessary import license.
- viii. Subcontractor shall control the disclosure of and access to technical data, information and other items received under the Order in accordance with and otherwise comply with U.S. export control laws and regulations, including but not limited to ITAR and the Export Administration Regulations (EAR). No technical data, information or other items provided by the Contractor in connection with the Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Subcontractor, without the express prior written authorization of the Contractor and the Subcontractor's obtaining of the appropriate export license, technical assistance agreement or other required documentation for ITAR-controlled technical data, information or items.
- ix. Subcontractor shall immediately notify Contractor in writing if it is or becomes listed on a Debarred, Excluded or Denied Party List or similar list of an agency of the U.S. Government, UK government, United Nations or European Union or if its export privileges are denied, suspended or revoked. The Contractor reserves the right to terminate the contract with the Subcontractor should they become listed.

(c) **Countervailing and Anti-Dumping Duties.** Subcontractor warrants that all sales made under the Order are or shall be made at no less than fair value under Subtitle IV of the Tariff Act of 1930 entitled "Countervailing and Anti-Dumping Duties" (19 U.S.C. Sec. 1671 and 19 U.S.C. Sec. 1673).



(d) Importer of Record; Ultimate Consignee. The Subcontractor is responsible to arrange for transportation and deliver the goods to the named place of delivery at destination, as indicated within the Purchase Order. The Contractor is responsible for clearing the goods through customs with their designated customs broker, pay the duties and taxes, VAT and other excise duties, as applicable. All freight charges must be separately itemized on the commercial invoice and not incorporated into the price of the goods. The Subcontractors invoice shall include the product HS Code and Country of Origin of the goods.

(e) Origin Certification; Conflict Minerals Compliance. Subcontractor shall provide Contractor with a certificate of origin for each and every Product sold hereunder and such certificate shall indicate the origin rule that the Subcontractor used in making the certification. Subcontractor acknowledges that Contractor is required to comply with and shall comply with Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”) and its implementing regulations which currently include requirements related to the use of tin, tantalum, tungsten, and gold (“Conflict Minerals”). Subcontractor shall source and track the chain of custody of all Conflict Minerals contained in any Products in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. At Contractor’s request, Subcontractor shall execute and deliver to Contractor declarations in the form of the EICC-GeSI Conflict Minerals Reporting Template as adopted by EICC-GeSI or in any other form that Contractor reasonably requests. Subcontractor shall immediately disclose to Contractor any changes to the conflict-free minerals status of any Products. If the Contractor has reason to believe the minerals in any Products are not conflict-free, Contractor shall place the Subcontractor under contract review and research alternative supply sources and may immediately terminate the relevant Order as a termination for default under Section 5 hereof. All Products provided hereunder shall be “Conflict Free”, as defined in the Dodd-Frank Act.

(f) Toxic, Hazardous or Carcinogenic Substances; REACH; RoHS. Subcontractor represents and warrants that (a) the products supplied in accordance with the Order and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with, any laws or regulations of any country or jurisdiction in the world, including but not limited to the United States, the European Union (“EU”), and nations adopting legislation similar to that of the EU; (b) nothing prevents the sale or transport of the products or substances contained therein in any country or jurisdiction in the world; (c) all such products and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or authorized under the EU Registration, Evaluation, Authorization and Restriction of Chemicals regulation (“REACH”) if pre-registration, registration and/or authorization is required; and (d) in accordance with the restrictions set forth in the Recycling of Hazardous Substance (“RoHS”) directives, the products and any substances contained therein do not include hazardous substances banned under RoHS, such as lead, mercury, cadmium, and hexavalent chromium and flame retardants such as polybrominated biphenyls or polybrominated diphenyl ethers. In addition to complying with REACH and RoHS, Subcontractor shall timely provide Contractor with all relevant information on the products necessary for the Contractor and/or any downstream user (as defined in Article



3(13) of REACH) to timely and accurately fulfill their obligations under REACH and RoHS, including a list of ingredients and quantities. Subcontractor shall take all other measures as are necessary to comply with REACH and RoHS and their respective implementing regulations, as they may be amended over time. Subcontractor shall bear all costs, charges and expenses related to REACH and RoHS, including the pre-registration, registration, evaluation and authorization under the REACH regulation of the chemical substances that are the subject of the Order.

(g) Responsible Procurement.

i. Environmental Management and Compliance. The Subcontractor shall comply with all applicable local, national, and international environmental laws and regulations. The Subcontractor agrees to implement and maintain environmental management policies designed to minimize environmental impact, including (without limitation) waste disposal, emissions control, energy consumption, and resource efficiency. The Subcontractor further agrees to continuously work toward the reduction of its carbon footprint and the efficient use of renewable resources where feasible.

ii. Sustainable Resource Use and Waste Management. The Subcontractor shall take all necessary steps to ensure the responsible use of raw materials and other resources. This includes (without limitation) the minimization of water and energy consumption, reduction of non-renewable resource usage, and proper management of chemicals. The Subcontractor is required to minimize waste and implement practices that encourage reuse and recycling of materials.

iii. Prohibition of Child Labor and Forced Labor. The Subcontractor represents and warrants that no goods or services provided to Contractor will be produced or manufactured using child labor or forced labor, as defined by the applicable laws of the countries in which the Subcontractor operates. The Subcontractor agrees to uphold the rights of all workers and to prohibit any form of forced, involuntary, or exploitative labor practices.

iv. Working Conditions. The Subcontractor shall ensure that all of its employees are treated with dignity and respect, provided with fair compensation in accordance with applicable laws, and are afforded a safe and healthy working environment. The Subcontractor further agrees to implement safety programs and to provide appropriate training, equipment, and other measures to protect employees from potential hazards. The Subcontractor shall take proactive steps to prevent workplace injuries and accidents.

(h) Standard of Conduct. Subcontractor (i) represents and warrants that it has reviewed Contractor's Code of Ethics and Business Conduct found on Contractor's website (www.kymerainternational.com/code-of-ethics-and-business-conduct/) ("Code") which is incorporated herein by reference; (ii) agrees to abide by the principles set forth therein in the provision of Products and Services to Contractor; and (iii) represents and warrants that it has adopted appropriate and effective policies and procedures consistent with Subcontractor's Code.



Further, Subcontractor represents and warrants the provision of Goods and Services shall be performed in an environmentally responsible manner and to minimize adverse impacts on the environment. Subcontractor is encouraged to conserve natural resources, avoid the use of hazardous materials where possible, and engage in activities that reuse and recycle.

(i) **Data Privacy.** This provision applies whenever Subcontractor will have access to any Personal Information that is provided to or accessible by Subcontractor or its agents, representatives, or subcontractors in connection with this agreement or any transactions hereunder. "Personal Information" means information relating to an identified or identifiable natural person (whether affiliated with Contractor or a third party), regardless of the medium in which the information is collected, processed, or transferred. The term includes information about a Contractor director, employee, contractor, contract laborer, customer, supplier, or other third party. Subcontractor shall comply with all applicable national, federal, state and provincial laws relating to data privacy, the protection of Personal Information, and the cross-border transfer of Personal Information or data, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the laws and regulations of the European Union member states under the European Union Directive 95/46/EC (the "EU Directive"), the General Data Protection Regulation ("GDPR"), and any European Union law or regulation that may be enacted to replace the EU Directive or the GDPR.

12. MISCELLANEOUS PROVISIONS.

(a) **Entire Agreement.** The Order, with such documents as are expressly incorporated by reference, and these Terms, shall be intended by the parties as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties, no usage of the trade, no prior or contemporaneous agreement, representation or understanding, oral or written, including without limitation, any provisions on a quotation, acknowledgment, invoice, electronic mail or other written communications or document, shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge and opportunity for objection.

(b) **Waiver.** The failure of Contractor to enforce at any time or, for any period of time, any of the provisions hereof shall not be construed to be a waiver of such provisions, nor the right of Contractor thereafter to enforce each and every such provision.

(c) **Severability.** If provision of these Terms or the Order is invalid or unenforceable under any statute, regulation, ordinance, executive Order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Terms and the Order will remain in full force and effect.

(d) **Survival.** Any provisions of the Order or the Terms, which by its nature is intended to survive termination, cancellation, completion or expiration of the Order (including without limitation Effect of Termination, Confidentiality, Warranty, Remedies, Indemnity, Limitation of Liability,



Entire Agreement, Compliance and Governing Law), shall continue as a valid and enforceable obligation of the parties, notwithstanding such termination, cancellation, completion or expiration.

(e) **Disputes; Choice of Law:** The Order, these Terms and the sale of Products or Services by Subcontractor to Contractor shall be construed and interpreted according to the laws of the state of the Contractor entity listed on the Order, exclusive of its conflicts of laws principles. The exclusive forum for adjudication of any disputes shall be the federal or state courts of the state where the Contractor entity listed on the Order is located, and the parties hereby consent to personal jurisdiction and venue in such courts in any proceeding. The United Nations Convention on the International Sale of Goods shall not apply. The rights and remedies herein provided shall be cumulative, and in addition to any other rights and remedies, provided at law or equity.

(f) **Relationship; Independent Contractors:** Contractor and Subcontractor are independent contracting Parties and nothing in these Terms or the Order makes either Party the agent or representative of the other for any purpose or grants any authority to assume or create obligations on behalf of the other Party.

(g) **Notice:** The Parties shall give all notices and communications between the parties in writing by either personal delivery or sent via facsimile or certified mail, postage prepaid and return receipt requested addressed, electronic mail or regular mail to the party's address specified on the face of the Order, or to the address that a party has notified to be that party's address for the purposes of this Section. All notices shall be in English and shall be effective upon receipt.



Attachment A

**Additional Information and
Modifications to Terms and Conditions**

This Attachment A to the Subcontractor Terms & Conditions shall only be effective if executed by both Contractor and Subcontractor, and will only be effective with respect to items initialed by an authorized signatory of Contractor. Any items that are not initialed by a valid Contractor signatory in this Attachment A shall be deemed null and void. Notwithstanding anything to the contrary in the Terms, this Attachment A will control for any agreed modification provided herein. The other terms and conditions shall continue to apply in full force and effect.

Article of Terms		TSS Officer Initials
1.	Prime Contractor: _____ Contact Information: _____ _____ _____ _____	
2.	Notwithstanding anything to the contrary in Article 2 of the Terms, Contractor agrees that Subcontractor will not be responsible for the following costs that are (a) checked and (b) specified in detail here: <input type="checkbox"/> Labor: _____ _____ <input type="checkbox"/> Materials: _____ _____ <input type="checkbox"/> Equipment: _____ _____ <input type="checkbox"/> Travel: _____ _____ <input type="checkbox"/> Other: _____	

Article of Terms	TSS Officer Initials
<p style="text-align: center;">_____.</p> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>3. Notwithstanding anything to the contrary in Article 3 of the Terms or Order, Contractor agrees that Subcontractor’s obligations for delivery and performance shall be modified as follows:</p> <p>_____</p> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>4. Notwithstanding anything to the contrary in Article 4 of the Terms, Contractor agrees that Subcontractor’s obligations to maintain particular levels of insurance shall be set at the following levels:</p> <p><input type="checkbox"/> Workers’ Compensation: _____</p> <p>_____</p> <p><input type="checkbox"/> Commercial General Liability: _____</p> <p>_____</p> <p><input type="checkbox"/> Automobile Liability: _____</p> <p>_____</p> <p><input type="checkbox"/> All-Risk Property Insurance: _____</p> <p>_____</p>	

Article of Terms	TSS Officer Initials
<input type="checkbox"/> Professional Liability Insurance: _____ _____ _____	
<p>5. Notwithstanding anything to the contrary in Article 5 of the Terms, Contractor agrees that the termination rights set forth therein shall be modified as follows:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>6. Notwithstanding anything to the contrary in Article 6 of the Terms, Contractor agrees that its inspection, audit and rejection rights shall be modified as follows:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>7. Notwithstanding anything to the contrary in Article 7 of the Terms, Contractor agrees the payment terms for money owed from Contractor to Subcontractor shall be modified as follows:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>8. Notwithstanding anything to the contrary in Article 8 of the Terms, Contractor agrees that the Subcontractor's obligations relating to confidential information, ownership and other proprietary rights shall be modified as follows:</p> <p>_____</p>	

Article of Terms	TSS Officer Initials
<hr/> <hr/> <hr/> <hr/> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>9. Notwithstanding anything to the contrary in Article 9 of the Terms, Contractor agrees that the Subcontractor’s warranties provided shall be modified as follows:</p> <hr/> <hr/> <hr/> <hr/> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>10. Notwithstanding anything to the contrary in Article 10 of the Terms, Contractor agrees that the Subcontractor’s warranties provided shall be modified as follows:</p> <hr/> <hr/> <hr/> <hr/> <p style="text-align: center;"><i>Use additional pages if space insufficient.</i></p>	
<p>11. Notwithstanding anything to the contrary in Article 11 of the Terms, Contractor agrees that the indemnification obligations of Subcontractor shall be modified as follows:</p> <hr/> <hr/> <hr/> <hr/>	

