

**TERMS AND CONDITIONS FOR NON-
GOVERNMENT PURCHASE**

Form S022 (10/2005)

GRAKEN Corp.

1. **DEFINITION OF ARTICLES.** The equipment, services, articles, technical data, or supplies furnished by **Contracting Company, Inc** (herein called "SELLER") under this order are (herein called "Articles") shall conform to GRAKEN Corp. (herein called "BUYER") requirements, drawings, and/or specifications on the face of this order.
2. **ACCEPTANCE.** This order becomes a binding contract subject to the terms and conditions hereof when accepted by acknowledgment or commencement of performance thereon. This order is made expressly conditional upon SELLER's assent to these terms and conditions. No conflicting or additional terms and conditions offered by the SELLER shall be part of this order, nor shall acceptance by BUYER of the Articles delivered pursuant to this order constitute acceptance by BUYER of any of SELLER's terms and conditions.
3. **PACKAGING AND SHIPPING.** All transportation or packaging shall be at SELLER's expense unless otherwise stated in this order. All Articles shall be packaged in suitable containers for protection in shipment and storage. Damage to any Articles resulting from improper packaging shall be charged to SELLER. All goods must be shipped per instructions on the face of this order. Otherwise, all extra handling charges shall be borne by SELLER.
4. **WARRANTIES.** SELLER expressly warrants that the Articles delivered hereunder will be merchantable, free from defects in material and workmanship, suitable for the use intended, and will conform to applicable specifications, drawings, samples, and descriptions; and, if of BUYER's design, will be free from design defects.
5. **CHANGES.** BUYER may, at any time, by written change order and without notice to sureties, make changes in (1) drawings, designs, or specifications, (2) method of packaging or shipment, (3) quantity of Articles ordered, (4) time of delivery, and/or (5) place of delivery. Should such changes cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this purchase order, an equitable adjustment in price and/or time for performance of this order will be made. Any claim by SELLER for such adjustment must be made within thirty (30) days from the date of receipt of the change order. No change modification, or revision of this order shall be valid unless authorized in writing and signed by the BUYER's purchasing agent or other authorized representative. Nothing in this paragraph shall excuse SELLER from diligently proceeding with the order as changed.
6. **CANCELLATION.** BUYER may terminate all or any part of this Purchase Order at any time or times without cause by telegraphic or other written notice to SELLER. In case of any termination by BUYER of all or any part of this Purchase Order without cause except that any termination claim must be submitted to BUYER within thirty (30) days after the effective date of termination. The provisions of this paragraph shall not limit or affect the right of BUYER to terminate this Purchase Order for SELLER's Default and shall not apply to a termination for SELLER's Default.
7. **TERMINATION FOR SELLER'S DEFAULT.** BUYER may, by written notice to SELLER, terminate the whole or any part of this order if (a) SELLER fails to make any delivery within the time specified (or, if no time is specified, within a reasonable time); (b) if SELLER fails to perform any other provisions of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms, and in either of these circumstances does not cure such failure within thirty (30) days (or other period designated) after date of notice from BUYER specifying such failure; (c) SELLER becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors. Such notice will be in writing and mailed by U.S.

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Mail addressed to the BUYER, and the date of notice shall be the date of mailing. BUYER shall have no obligations to SELLER in respect to the terminated part of this order, except as hereinafter provided. SELLER shall transfer title and deliver to BUYER, in the manner and to the extent requested in writing by BUYER, at or after termination, such completed Articles, partially completed Articles and materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information, and contract rights as SELLER has produced or acquired for the performance of the terminated part of this order. BUYER will pay SELLER the contract price for completed Articles delivered to and accepted by BUYER, and the fair value of the other property so requested and delivered. BUYER's right, as set forth in this Section, shall be in addition to BUYER's other rights in case of SELLER's default, whether set forth in this order or not, except that SELLER shall not be liable to BUYER for any damages if SELLER's default is due to a cause beyond its control and without its negligence, including flood, fire, explosion, strike, act of the Government, quarantine, restriction, epidemic, or catastrophe.

8. **DELIVERY/EXCESS SHIPMENTS.** Time is of the essence in the performance of this Purchase Order. Accordingly, SELLER shall give prompt notice of any cause that will, or will likely, adversely affect scheduled deliveries. SELLER may offer excess product(s) to the BUYER at no obligation to the BUYER to purchase. If the BUYER chooses to purchase excess product(s), the BUYER reserves the right to negotiate a new purchase price for the adjusted quantity.
9. **LABOR DISPUTES.** SELLER agrees that whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, SELLER shall immediately give written notice to BUYER of such disputes. SELLER agrees to insert the essence of this clause, including this sentence in all of its subcontracts or orders issued as a result of this order.
10. **TAXES.** SELLER shall be liable for the payment of all taxes related to this transaction except as may be otherwise expressly noted on the face of this order.
11. **REPRODUCTION RIGHTS.** BUYER does not grant to SELLER (a) any reproduction rights to the Articles ordered; or (b) any rights to use designs, drawings, or other information belonging to or supplied by BUYER in the manufacture or design of Articles or materials for anyone other than BUYER.
12. **DESIGNS, TOOLS, DATA, ETC.** Title to all materials and information, including, but not limited to, tools, patterns, equipment, designs, drawings, engineering data, or other technical or proprietary information, furnished by or for the BUYER, or, if furnished by SELLER especially for this order and included in the price of or relating to the performance of the order, shall remain in BUYER's or its customer, as the case may be. All such items shall be confidential. All such items shall be maintained in good condition and shall be subject at all times to disposition as BUYER may direct. If BUYER retains possession of any SELLER-owned tools or other equipment, SELLER agrees to indemnify and to hold BUYER harmless from any loss, damage or liability, including without limitation for injures to BUYER's employees, arising from BUYER's possession, storage, modification or use of such tools or other equipment.

Any knowledge or information which SELLER has disclosed or may hereafter disclose to BUYER in connection with the purchase of the Articles covered by this order, shall not, unless otherwise specifically agreed upon in writing by the BUYER, be deemed to be confidential or propriety information, and shall be acquired, free from any restrictions (other than a claim for patent infringement) as part of the consideration for this order.

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13. **PATENT RIGHTS.** If any experimental, developmental, or research work is called for or required under this order, SELLER agrees to disclose, on request, to BUYER each invention (whether patentable or not) conceived or first reduced to practice in the performance of this order. (NOT applicable if this order is placed under a Government contract).
14. **PATENT INDEMNITY.** To the extent that the Articles ordered are manufactured to designs not originated by BUYER, SELLER guarantees that the sale and/or use of such Articles delivered hereunder will not infringe upon any United States patents; and SELLER further agrees to indemnify and Save BUYER and/or its customers harmless from any expense, loss, cost, damage, or liability which may be incurred because of any infringement or alleged infringement of patent rights with respect to such Articles, and to defend, at its own expense, any action or claim in which such infringement is alleged, provided BUYER is notified as to such actions or claims against SELLER. Indemnification as to use shall not apply to infringements arising from use in combination with other items where infringement would not have occurred from the normal use for which the Article was designed.
15. **INSPECTION.** All Articles will be subject to final inspection and acceptance at destination, notwithstanding any inspection at SELLER's facilities or prior payment therefore. Any rejected Articles returned to SELLER shall be at SELLER's expense and no replacements of such defective Articles shall be made unless specified by BUYER. BUYER reserves the right to reject all defective Articles and return same to SELLER for repair, rework, or correct such defective Articles. If SELLER fails to promptly replace and correct rejected Articles to BUYER's satisfaction, SELLER is liable for termination for default in accordance with the Termination Default clause [para 7]. This paragraph shall not limit BUYER's rights or SELLER's obligation under any provision of this order or the terms and conditions herein contained or in law or equity.
16. **ADVERTISING.** SELLER may advertise or publish the fact that it has been selected to furnish the Articles herein mentioned, or use any of the BUYER's trademarks upon written approval from BUYER.
17. **RISK OF LOSS.** SELLER assumes the following risks: (a) all risks of loss or damage to all Articles ordered, work in process, materials, and other things until the receipt thereof by BUYER as herein provided; (b) all risk of loss or damage to third persons and their property until the delivery of the Articles ordered as herein provided; (c) all risks of loss or damage to any property in the possession of SELLER received from or held for the account of BUYER, including Government furnished property if applicable, until such property has been delivered or returned to BUYER or the Government, as the case may be; and (d) all risks of loss or damage to any of the Articles ordered or part thereof rejected by BUYER, after the time of receipt thereof at SELLER's facility or takes physical possession. All material and equipment furnished by BUYER on other than on a charge basis shall, at all time shall remain the property of BUYER.
18. **INSURANCE.** SELLER shall obtain and/or maintain, during performance of this order, usual and customary insurance, in the coverages and limits for undertakings of this nature or as otherwise reasonably requested by BUYER. In addition, SELLER shall, if requested, furnish evidence of such insurance if requested.

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19. **EQUAL OPPORTUNITY.** SELLER shall comply with Title-VII of the Civil Rights Act of 1964, Executive Order 11246 and the rules and regulations of the a U.S. Department of Labor issued there under.
20. **AUDITS AND ACCESS.** SELLER agrees that its books and records and its plants, or such part thereof as may be engaged in performance of this purchase order, shall, at all reasonable times and up to one (1) year after final payment, be subject to inspection and audit by the BUYER, mutually acceptable public accounting firm or designee, or any authorized representative of the U.S. Government.
21. **WAIVER.** Failure of BUYER or SELLER to enforce any term or condition of this Purchase Order shall not constitute a waiver of that or any other term or condition hereof or any remedy available to such party.
22. **PRICES AND DISCOUNTS.** The SELLER represents and warrants that the prices set forth herein are as low as, or lower than, those currently being quoted to commercial or industrial users or the Government for the same products, in like quantities, under similar circumstances. Cash discount periods will commence from the date of receipt of Articles or of invoice, whichever is later. Invoices will be paid according to discount terms stated in this order.
23. **BUYER PROVIDED MATERIAL.** The SELLER shall return all unused BUYER provided material upon completing the purchase order. SELLER shall as much as practical remove/cut-away excess material in a manner that produces large chunk size pieces.
24. **COMPLIANCE WITH LAWS.** SELLER agrees to comply with all federal, state and local laws, as well as with all orders and regulations issued under any applicable law, and represents that the items to be furnished hereunder are produced in compliance with such laws and regulations. SELLER covenants to save and hold harmless BUYER from, any and all costs, damages and expenses (including necessary attorney's fees) suffered or occasioned to it directly or indirectly through any failure of SELLER to comply with any such law, regulation or order. Each of SELLER's invoices shall contain a certificate that the items covered by the invoices were produced in compliance with the Fair Labor Standards Act of 1938 (29 U.S. C. 201-219), Section 503 of the Rehabilitation Act of 1973, and Section 38 U.S.C. 2012 of the Vietnam Veterans Readjustment Assistance Act of 1974, as amended from time to time or as incorporated herein by reference.
25. **LIENS.** All items to be delivered hereunder and all property to be returned to BUYER shall be free and clear of any and all encumbrances whatsoever.
26. **APPLICABLE LAW.** This agreement shall be governed, interpreted and enforced in accordance with the laws of the State of California, the parties hereto acknowledging that the rights, duties and obligations arising hereunder provide significant contacts to satisfy jurisdictional requirements of the State of California. Any action arising from or connected with this Purchase Order in which Seller is a Defendant shall be taken in Courts of California.
27. **DISPUTES.** Any dispute arising under this order, which is not settled by agreement of the parties, may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this order, SELLER

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shall proceed diligently with the performance of this order in accordance with the decision of BUYER.

28. INDEMNITY OF SELLER'S DEFECTIVE PRICING. SELLER agrees to indemnify and hold harmless BUYER from all costs and expenses of any nature incurred by BUYER in defense of any defective pricing action brought by reason of SELLER's or any lower tier subcontractor's defective pricing.
29. CERTIFICATE OF CONFORMANCE (C OF C). Where applicable, the following certification of conformance is prescribed. "SELLER, by its acceptance of and performance under this P.O., certifies that all Articles delivered against this order conform in all respects to the applicable specifications and requirements of the order, and that such Articles were produced from materials and/or components conforming to the applicable specifications; and as applicable and/or required are evidenced by physical and/or chemical reports."
30. ASSIGNMENT & SETOFF. This P.O. may be assigned by the BUYER or made into a subcontract with any other party for the furnishing of any of the completed or substantially completed articles covered by this purchase order without SELLER's prior written consent. BUYER may setoff against any amounts owing SELLER any sums due from BUYER under this or any other contract with SELLER.
31. RESERVED
32. AUTHORIZATION. SELLER is not authorized to proceed with any activity under this order without express authorization given by BUYER's Purchasing Agent.