

**PURCHASE ORDER
GENERAL TERMS AND CONDITIONS
GTC-001 (Rev. A)**

1.0 DEFINITIONS.

Whenever used in this Purchase Order,

- (a) "Customer" means any customer of Buyer, any subsequent owner, operator or user of the Goods and any other individual, partnership, corporation or person or entity which has or acquired any interest in the Goods from, through or under Buyer.
- (b) "FAR" means the Federal Acquisition Regulation. Unless otherwise specified in this Purchase Order, FAR references cited herein are those in effect on the date of this Purchase Order;
- (c) "DFARS" means Defense Federal Regulations Supplement. Unless otherwise specified in this Purchase Order, DFARS references cited herein are those in effect on the date of this Purchase Order. (d) "Goods" means all of the goods, services, data, software and other items furnished or to be furnished to Buyer under this Purchase Order.
- (e) "Purchase Order" means this purchase contract including the provisions on its face, these General Terms and Conditions, and all of the specifications, technical descriptions, statements of work, drawings, designs, documents, and other requirements and provisions attached to, incorporated into or otherwise made a part of this Purchase Order by reference.
- (f) "Buyer" means Brek Manufacturing Company, also referred to as "BMC."
- (g) "Seller" means the party with whom Buyer is contracting.
- (h) "Parties" means Buyer and Seller collectively.

2.0 ACCEPTANCE.

This Purchase Order is Buyer's offer to Seller. Seller's acceptance is expressly limited to the written terms of this Purchase Order. No additional or different terms shall be binding. Buyer hereby objects to any additional or different terms contained in Seller's acceptance. Any of the following acts by Seller shall constitute acceptance:

- (a) Signing and returning a copy of this Purchase Order.
- (b) Commencing performance of any effort required to complete this Purchase Order.
- (c) Informing Buyer of commencement of any effort required to complete this Purchase Order.
- (d) Shipping of any Goods in performance of this Purchase Order.

3.0 ACCESS TO FACILITY AND RECORDS.

(a) Seller irrevocably grants to Buyer or Buyer's Customer access to Seller's facility at any reasonable time requested by Buyer for the following purposes:

- (1) To verify progress on any Purchase Order issued to Seller by Buyer;
- (2) To verify Seller's work in process, raw material, or finished Goods meet all requirements of this Purchase Order and all terms and conditions specified thereon.
- (3) To inspect completed Goods if source inspection at Seller facility is required per this Purchase Order, or otherwise verify compliance of Goods to the terms of this Purchase Order;
- (4) To review certifications, documentation, or other records to verify conformance of Goods and Seller's production processes to the requirements of this Purchase Order.
- (5) To inspect financial records to perform fact finding for the purposes of negotiations.
- (6) Seller agrees to furnish financial statements periodically on the request of Buyer, for the purposes of determining Seller's ability to complete performance of this Purchase Order, or future prospective Purchase Orders.

4.0 DELIVERY, TITLE AND RISK OF LOSS.

- (a) Shipments made against this Purchase Order will be in strict accordance with the specified quantities, without shortage or excess; the specified schedules, neither ahead nor behind schedule. Unauthorized over shipments and early shipments shall be returned at Seller's expense.
- (b) The FOB point shall be as designated in this Purchase Order. Risk of any loss and/or damage to Goods occurring before receipt at the delivery point specified shall be Seller's responsibility.

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(c) Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to minimize the delay to the maximum extent possible, including the expenditure of overtime and premium shipment arrangements. Any additional cost caused by these requirements shall be borne by the Seller.

(d) If Seller is unable to meet the required delivery schedules for any reason other than a change directed by the Buyer, Buyer shall have the option to (1) cancel this Purchase Order, or (2) fill such Purchase Order or any portion thereof, from sources other than Seller, and to reduce Seller's Purchase Order quantities accordingly at no additional cost, without any penalty to Buyer. This condition shall not limit buyer's rights under the Default clause contained herein.

(e) Buyer and Seller agree that time is of the essence in performance of this Purchase Order.

(f) Seller warrants that the Seller has legal title to Goods, and that Goods are free from all liens and encumbrances.

(g) Passing of title upon delivery to FOB point does not constitute acceptance by Buyer.

5.0 SET-OFFS.

Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this or any other Purchase Order from Buyer.

6.0 PACKAGING/MARKING.

(a) Goods shall be packed in suitable containers for protection and labeled with Buyer's shipping marks to permit safe transportation. No charges are allowed for boxing, packing or crating, unless previously approved by Buyer.

(b) Any damage to Goods due to insufficient or defective packaging during transit or storage will be the responsibility of Seller.

(c) Seller will identify and package all Hazardous Materials/Dangerous Goods in accordance with applicable laws and regulations. If a Material Safety Data Sheet (MSDS) is required for Goods, the Seller will include one copy of the MSDS with each shipment of goods furnished under this Purchase Order.

7.0 EARLY/LATE AND OVER SHIPMENT.

(a) BMC's Early/Late and Over Shipment policy is 7 Days early, 0 days late, to the exact Purchase Order due date, to the exact Purchase Order quantity due on that date.

(b) If Goods are received more than 7 days prior to the Purchase Order delivery date, Buyer may not receive or pay early unless Buyer's purchasing representative expressly authorizes the early shipment with a Purchase Order change notice to authorize the early shipment. If this policy is violated, BMC may return the Goods to the Seller at Seller's cost.

(c) If Goods are received in larger quantities than ordered, Buyer may return the quantity over the firm Purchase Order quantity due to Seller, at Seller's expense. Any increase in quantity will be expressly authorized by Buyer's purchasing representative, with a Purchase Order change notice.

8.0 SUBCONTRACTING.

Seller agrees that it will not enter into a subcontract for the procurement of the Goods ordered on this Purchase Order in completed or substantially completed form without first securing the written approval of Buyer. Buyer may immediately terminate any subcontract with any Seller, at no cost to the Buyer, should any unauthorized subcontracting occur, as defined in this clause. Such a termination will be considered a Termination for Default as defined herein.

9.0 INSPECTION.

(a) Unless otherwise specified in QTC-001 clauses incorporated in the Purchase Order, Buyer's final inspection and acceptance shall be at destination.

(b) Failure of Buyer to inspect and accept or reject Goods shall not relieve the Seller from responsibility for compliance with Purchase Order requirements, nor impose liability on Buyer.

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(c) Inspection and acceptance by Buyer or its Customer shall not waive Seller's responsibility for latent defects or express or implied warranties in the goods, which shall survive delivery and inspection.

10.0 WARRANTY.

(a) Seller warrants to Buyer and any Customer, that all Goods delivered under this Purchase Order will: (1) be free from defects in materials, workmanship, and manufacturing processes; (2) conform to the requirements of this Purchase Order, including, but not limited to the applicable descriptions, specifications, drawings, if any; (3) be free from defects in design for any Goods not produced in accordance with designs furnished by Buyer; (4) be free from liens and encumbrances (5) be suitable for the purposes intended, whether expressed or reasonably implied.

(b) If any of the Goods fails to comply in any way to the warranty set forth above, and seller has been given notice of such nonconformance within the period of time set forth above, Buyer shall have the option, in its sole discretion, at Seller's expense, to (1) require Seller to promptly make all repairs, modifications, or replacements ("Corrections") necessary to enable such Goods to comply in all respects with said warranty; or (2) make, or have a third party make, all Corrections necessary to enable such Goods to comply in all respects with said warranty.

(c) In addition to the actual cost of any Correction, Seller shall also be responsible for: (1) all direct labor costs incurred in the actual removal and reinstallation of the nonconforming Goods; (2) all administrative costs incurred by Buyer to accomplish Correction of nonconforming Goods; (3) transportation and insurance costs for Goods corrected pursuant to the provisions of this clause; (4) all delay, disruption, and penalty costs incurred by Buyer or Customer as a result of nonconforming Goods delivered by Seller.

(d) Seller will reimburse Buyer for each claim asserted by Buyer within 30 days from receipt of Buyer's claim. Seller's obligation to meet the delivery schedule established by this Purchase Order shall not be affected by any Corrections required by this clause.

(e) Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its customers and users of customers' Goods.

(f) The rights of Buyer set forth in this clause shall be in addition to, and not in lieu of, any other right Buyer may have under this Purchase Order, or in law or equity.

11.0 CHANGES.

(a) Buyer may at any time make Changes in the drawings, specifications, models or other descriptions furnished, quantity of Goods ordered, delivery schedule, or any other element of this Purchase Order. If any such Changes cause an increase or decrease in Purchase Order value, or in time required for performance, an equitable adjustment will be made and implemented by issuance of a Purchase Order change notice by the purchasing representative of Buyer.

(b) No modification of this order will be binding on Buyer unless made by a formal purchase order change notice signed by the purchasing representative of the Buyer.

(c) Seller will notify Buyer's authorized purchasing representative within 10 days of receipt of changed requirements, and submit a fully supported cost proposal 10 days after notification. (d) Buyer reserves the right to inspect Seller's books of account for purposes of validating claim amounts, at Buyer's sole discretion.

(e) If Seller claims the cost of any Goods, raw material, work in process, or property made obsolete or excess by the Change, Buyer will have the right to acquire such property for the cost negotiated.

(f) Buyer and Seller will negotiate in good faith to resolve claims related to Changes. Failure to agree upon an equitable adjustment will be considered a Dispute, and the Parties may pursue remedies as provided herein under "Disputes." Seller agrees to diligently pursue performance to the order as changed, regardless of the status of claim for equitable adjustment under this Changes clause.

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12.0 PROPERTY CONTROL.

- (a) All drawings, specifications, models, and other data furnished by Buyer to Seller for, or related to, performance of this Purchase Order will be considered the proprietary property of Buyer, and will be held in strict confidence by Seller.
- (b) Except in the performance of this purchase order, such data shall not be reproduced, used, and/or disclosed to others by Seller without Buyer's prior written approval.
- (c) All raw materials, partially completed or completed items, and production tooling furnished by BMC, for production of Goods will be protected, insured, maintained, and kept in safe storage for use only in the production of Goods for this order. Upon request by Buyer, Seller will give a full accountability of any or all property furnished by Buyer in Seller's possession.
- (d) Seller will return any and all BMC furnished property promptly upon request. Seller will not dispose of any BMC furnished property without BMC'S written consent.
- (e) Seller will be responsible for any damage, loss or theft of BMC property, (except for normal wear and tear in the case of production tooling) while in possession of Seller.

13.0 TERMINATION FOR CONVENIENCE.

- (a) Buyer may terminate performance of work under this Purchase Order in whole or in part, from time to time. Buyer will indicate a termination by either sending a Notice of Termination, or, a Purchase Order change notice. The Notice of Termination, or Purchase Order change notice will specify the extent of the termination and the effective date.
- (b) Upon receipt of this Notice of Termination or Change Notice, Seller will immediately proceed with the following obligations:
 - (1) Stop work as specified in the Notice of Termination or Change Notice.
 - (2) Place no further subcontracts or purchase orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to Buyer, as directed by Buyer's purchasing representative, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by Buyer's purchasing representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for the purposes of this clause.
 - (6) As directed by the Buyer's purchasing agent, Seller will transfer title and deliver to the Buyer:
 - (i) The fabricated parts, raw material, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and,
 - (ii) The completed or partially completed plans, drawings, information, software, and other property that, if the contract had been completed, would be required to be furnished to the Buyer.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action required to preserve and protect the property terminated in which the Buyer has or may acquire an interest.
 - (9) Complete and submit a termination inventory schedule within 15 days of the Notice of Termination or Purchase Order Change Notice, unless extended in writing by Buyer.
 - (10) Complete and submit a final termination claim within 90 days of the Notice of Termination or Change Notice, unless extended in writing by Buyer.

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(11) Buyer and Customer will have the right to inspect Seller's books, records, fabricated parts, raw material, work in process, completed work, supplies, and other property produced or acquired for the work terminated, to verify the value of work terminated.

(12) The cost principles and procedures under FAR part 31 in effect on the date of the purchase order shall govern all costs claimed, agreed to, or determined under this clause.

(13) Under no circumstances will the total termination amount exceed the original Purchase Order total dollar value.

14.0 TERMINATION FOR DEFAULT.

(a) Buyer may, by written notice of default to the Seller, terminate this contract in whole or in part, if Seller fails to:

(1) Deliver Goods within the time specified in this Purchase Order, or any extension;

(2) Make sufficient progress, so as to endanger timely performance of this Purchase Order;

(3) Perform any other provisions of this Purchase Order.

(b) If Buyer terminates this Purchase Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Goods similar or the same as those terminated from another party, and Seller will be liable to Buyer for any excess costs for those supplies or services. However, Seller will continue the work not terminated.

(c) Seller will not be liable for any excess costs if the failure to perform arises from causes beyond the control of Seller, or Buyer-approved contractor of Seller and without fault or negligence of the Seller, or Buyer-approved contractor of Seller. Examples of such causes include:

(1) acts of God or of the public enemy

(2) acts of the Government in either its sovereign or contractual capacity

(3) fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, severe weather

In each instance the failure to perform must be beyond the control and without the fault or negligence of Seller.

(d) Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, the fabricated parts, raw materials, work in process, completed Goods, supplies, and other material produced or acquired for the work terminated, and the completed or partially completed plans, drawings, information, software, and other property that, if the contract had been completed, would have become the property of the Buyer (all the foregoing in this paragraph collectively referred to as "Manufacturing Materials").

(e) Buyer shall pay the contract price for Manufacturing Materials accepted. Payment for all Manufacturing Materials shall be in accordance with the Termination for Convenience section of these terms and conditions, with the exception that the Seller will not be entitled to profit on such Manufacturing Materials.

(f) Buyer may withhold any amount due under this purchase order any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.

(g) Buyer may terminate this Purchase Order under this clause in whole, or in part, in the event one of the following occurs, is threatened, or is imminent with respect to Seller: insolvency, bankruptcy, reorganization, suspension of business, sale of a substantial part of Seller's assets: filing for dissolution, liquidation proceedings, appointment of a trustee or receiver for Seller's property or business, or assignment.

15.0 DISPUTES.

(a) Except as otherwise provided in this purchase order, Seller may litigate any dispute arising hereunder in a court of competent jurisdiction of the State of California. Regardless of the place of its execution or performance, this Purchase Order is to be governed by and construed according to the laws of the State of California.

(b) Pending settlement or final judgment, Seller shall proceed diligently with the performance of this Purchase Order in accordance with the decision and instruction of Buyer.

16.0 INDEMNITY AND INSURANCE.

(a) During the entire Purchase Order performance period and irrespective of the place of performance, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverages in the minimum limits indicated: (1) Commercial General Liability (\$1,000,000 per person/\$2,000,000 per occurrence bodily injury and/or property damage (alternative: \$2,000,000 combined single limit [CSL])). Coverages shall include but not necessarily be limited to, premises and completed operations and contracts; (2) Automobile Liability

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\$1,000,000 per person/\$2,000,000 per occurrence bodily injury and/or property damage (alternative: \$2,000,000 combined single limit [CSL] covering all owned, hired, and non-owned vehicles); (3) Workers Compensation and Employer's Liability: The workers' compensation insurance coverage shall be as required by the laws of the state in which the work is performed regarding such insurance. The minimum employer's liability insurance limit shall be \$1,000,000.

(b) Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this purchase order, provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified Parties.

17.0 COMPLIANCE WITH LAWS.

(a) Seller warrants that it shall comply with all applicable Federal, State, and local laws, rulings, and regulations in effect on the date of this purchase order.

18.0 MILITARY PROGRAMS.

(a) All Purchase Orders issued for Military Programs will be subject to Government Clauses Supplement GCS-001, in addition to these General Terms and Conditions GTC-001.

(b) Buyer will identify Military Programs by program name on Purchase Order.

(c) The following are examples of Military Program names: "KC-135, C-17, F-15, F-18, F-35, B-1, B-2, E2, UCAV, P8"

(d) Additional Military Program names may be used by Buyer in addition to the above, at its sole option.

19.0 ORDER OF PRECEDENCE.

(a) In the event of any inconsistency between any parts of this Purchase Order, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Purchase Order
- (2) Government Clauses Supplement GCS-001 (If Purchase Order indicates Goods are for Military Program)
- (3) Purchase Order General Terms and Conditions GTC-001
- (4) Quality Terms and Conditions QTC-001
- (3) Statement of Work
- (4) Engineering Blueprints and applicable specifications

20.0 ENTIRE AGREEMENT.

(a) This purchase order, along with all attachments and references herein, sets forth the entire agreement between Buyer and Seller, and supersedes any and all other agreements, understandings and communication, between Buyer and Seller related to the subject matter of this purchase order. No amendment or modification of this purchase order shall be binding upon Buyer unless set forth in a written instrument signed by Buyer's purchasing representative. The rights and remedies afforded to Buyer or Customers pursuant to any provision of this Purchase Order are in addition to any other rights and remedies afforded by any other provisions of this Purchase Order, by law, or otherwise.



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Revision Number	Clause Number	Description of Change	Authorization	Date
NC	ALL	ORIGINAL	J. STANNARD <i>[Original Signed]</i>	3-2-04
A	18	ADDED "P8" TO LIST OF GOVERNMENT PROGRAMS	W. CONRAD /s/	3-2-15