

**EQUIPMENT TERMS AND CONDITIONS (OEM)**

The following terms and conditions (“Agreement”) apply to any orders submitted by OEM in response to this proposal by the Brooks Automation US, LLC entity, affiliate or subsidiary listed on the quotation issued to the OEM (“Brooks”). Any additional or differing terms and

- (c) Payment for transportation, custom duties, taxes, installation and custom services are due upon receipt of Brooks' invoice.
- (d) All payments, fees and charges under this Agreement are non-refundable, except as expressly set out in this Agreement. Except as expressly set out in this Agreement, Products are not returnable to Brooks.

**6. DELIVERY**

**(a) Delivery**

Shipping terms are FCA Chelmsford, Massachusetts or other applicable Brooks manufacturing facility. Delivery shall be deemed to occur at the FCA point. In addition, title (except for Software) and risk of loss shall pass at the FCA point. Unless OEM requests otherwise, all Brooks Products shall be packed for shipment and storage in accordance with Brooks' standard commercial practices. Special packaging requirements requested by OEM will be at OEM's expense. OEM will pay all charges for transportation.

**(b) Delivery Schedule**

Brooks shall use reasonable commercial efforts to fill all orders promptly upon issuance of the Order Acknowledgement Form therefor. Scheduled Product shipment dates for the Products are estimates only.

**(c) Delay**

**(i) Brooks' Delay**

OEM agrees to take all commercially reasonable action to mitigate any additional costs or expenses that OEM may incur as a result of a delay. In the event that Brooks fails to deliver products within thirty (30) days of the agreed upon schedule, OEM shall have the right, as its sole and exclusive remedy, to cancel any Purchase Order for such delayed Products, only, without any payment of the cancellation charges required under Article 3(c).

**(ii) Delays Due to OEM Modification**

Delays with respect to Brooks' originally committed shipment dates which result from OEM requested and Brooks approved modifications to the Products in question shall be considered OEM's responsibility and, in such cases, OEM waives its right to cancel the pertinent Purchase Order without payment of the cancellation charges as defined in Article 3(c). Brooks reserves the right to alter delivery schedules, prices and discounts of any and all Products modified as agreed by OEM and Brooks, and shall notify OEM, in writing, of any such alteration as applicable. Within ten (10) business days of the sending of such written notice, OEM shall elect to either: a) cancel the affected Purchase Order and pay the cancellation charges required under Article 3(c); b) confirm, in writing, its acceptance of the alterations to delivery schedules, prices and discounts; or c) rescind, in writing, its request for modification.

**(iii) Brooks' Limitation of Liability for Delay**

IN NO EVENT SHALL BROOKS BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM A DELAY IN SHIPMENT.

**(iv) Storage**

If OEM is unable to accept delivery of Brooks Equipment at the scheduled time, Brooks shall be deemed to have delivered the Brooks Equipment, and Brooks shall be authorized to invoice OEM for the Brooks Equipment as if shipment had been made and: (a) if Brooks is able to store such Brooks Equipment in its own facilities, OEM will pay Brooks reasonable transportation, handling, storage and insurance charges for the period of such storage; or (b) if Brooks is unable to store such Brooks Equipment in its own facilities, Brooks reserves the right to arrange handling and storage in a suitable warehouse with a reputable company on behalf of OEM at OEM's expense. In either case, Brooks will maintain or arrange for insurance, on OEM's behalf and at OEM's expense, for the full purchase price of the Brooks Equipment. If Brooks Equipment is stored for ninety (90) days or more, the Brooks Equipment will be returned to Brooks' facility to undergo quality assurance procedures prior to reshipment. The cost of transportation and the performance of the quality assurance procedures, at Brooks' then applicable field service rates, will be paid by OEM. In cases where handling and storage become necessary per above, it will be the responsibility of OEM

(ii) The OEM will be responsible for any "first level" service or maintenance during the Warranty Period. To provide first level support, the OEM will (i) have field service engineers trained by Brooks; (ii) will have purchased all spare parts from Brooks, tooling and fixtures; and (iii) will follow all Brooks' troubleshooting, corrective and preventative maintenance procedures and t

or any other loss suffered or allegedly suffered by any person or entity and arising out of or otherwise in connection with any defect of any product of OEM or Customers that incorporates the Products delivered by Brooks to OEM or Customers hereunder (except for non-conformities solely in connection with the Products); provided, however, that Brooks shall give OEM prompt notice, in writing, of all such claims or actions instituted against it, and an opportunity to elect to take over, settle or defend the same through counsel of OEM's own choice and under OEM's sole discretion and at OEM's own expense, and will make available to OEM in the event of such election, all defenses against such claims or actions, known or available to Brooks.

**12. LIMITATIONS ON LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF BROOKS UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF BROOKS FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 8 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY THE OEM TO BROOKS WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL BROOKS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER BROOKS (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

Because of the hazardous nature of vacuum processing and Brooks' inability to control the scope or manner of data entry into its Systems, neither Brooks nor its Licensors shall be held liable for any damages, costs, loss, or personal injury due to the implosion, explosion, burning, damage or other failure of any non-Brooks products connected to the Systems. OEM shall be responsible for providing hardware interlocks which prevent unsafe control actions by the Systems.

**13. CHANGES AND DISCONTINUANCE**

Brooks reserves the right to make changes in the specification of the Products or parts thereof, or to discontinue manufacturing the Products. Brooks shall provide sixty (60) days written notice to OEM prior to discontinuance of the Products.   
HWT Terms (OEM) (December 2021) | Page 4 of 8



designated in writing to the other pursuant to this Article.

ii) Any other notices provided for under this Agreement shall be directly sent to the individuals specified by each of OEM and Brooks, or to such different individuals as either party may designate in writing to the other pursuant to this Article.

**(h)**

**Headings**

Headings in this Agreement are for reference purposes only, and shall not be used to interpret or construe this Agreement.

## EXHIBIT A - SOFTWARE LICENSING TERMS AND CONDITIONS

1. General. With respect to any software products incorporated in or forming a part of the Products hereunder, Brooks and OEM intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Brooks or its licensor, as the case may be, retains all rights and interest in software products provided hereunder. The following terms and conditions are intended to supplement, and not replace, the terms and conditions in the remainder of this Agreement. In the event of a conflict between the terms and conditions of this Exhibit A and the terms and conditions in the remainder of this Agreement, the terms and conditions of this Exhibit A shall prevail.

2. License. The grant to OEM of rights to the Software embedded in the Products which OEM purchases from Brooks hereunder is a non-exclusive royalty-free perpetual license to use such Software in the operation of such Products. OEM may use the Software only in machine readable form. A separate license is required for each item of Equipment on which a copy of the Software will be used. Except as expressly provided in Paragraph 8, "Sublicensing", below, OEM shall not otherwise sell, assign, transfer, copy

C. OEM's obligations under this Agreement and under the sublicenses granted to Customers, including an obligation to, upon Brooks' request, certify compliance with this Agreement, shall survive expiration or termination of this Agreement.