

**TERMS AND CONDITIONS OF SALE**  
**Brooks Automation Inc.**  
**Life Science Services**

**1. GENERAL.** The Terms and Conditions of Sale contained herein apply to the Quotation and along with the Quotation form the Contract. The Quotation may be provided herewith or provided separately, as the case may be. Any provisions contained in any document issued by Customer are expressly rejected and if the terms and conditions in this Contract differ from the terms of Customer's order, this document shall be construed as a counter offer and shall not be effective as an acceptance of the Customer's order. Customer's issuance of an order to Seller or Seller's commencement of the services set forth in the Quotation will constitute Buyer's acceptance of these Terms and Conditions of Sale.

**2. TAXES.** Unless otherwise specifically provided for in the Quotation or order acknowledgment, the amount of any federal, state and local taxes, excise, duties, tariffs or other similar fees applicable to the services covered by Brooks' Quotation shall be added to the purchase price and shall be paid by, and are the responsibility of, the Customer, or in lieu thereof Customer shall provide Brooks with a tax exemption certificate acceptable to the taxing authorities.

**3. PRICES.** Prices are quoted in local currency and do not include sales taxes, use taxes, import and export fees, customs fees, or any other taxes, levies or duties. Any such items shall be the separate responsibility of the Customer. Pricing for continued maintenance and support under an Annual Service Agreement beyond its term is subject to negotiation and must be agreed to in writing and signed by authorized representatives of each party.

**4. PAYMENT.** 100% of the Contract price is due upon commencement at the time of order or the Contract Coverage Start Date, whichever is earlier. Customer shall pay Brooks' invoice NET 30 days from receipt of the invoice.

**5. LATE PAYMENT:** A late fee of one and one-half percent (1.5%) per month or the highest rate allowed by law, whichever is lower, shall be applied to the total invoice price for payments not received within thirty (30) days after the date of invoice. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.

**6. DURATION AND TERMINATION.** This Contract shall commence on Contract Coverage Start date specified in this Contract or as of the date of Brooks' confirmation that an initial preventive maintenance and inspection visit was carried out and will continue until the Contract Coverage end date unless earlier terminated. If all of the Systems covered by the Services provided under this Contract are taken out of service during the term, the Contract is deemed to be terminated three months after written notification was given by Customer to Brooks thereof. A credit may be issued for the unconsumed Contract period. This Contract may be terminated without prejudice to any pre-existing rights by either party forthwith if the other defaults in its obligations under this Contract and such defaults continue for 30 days after written notice thereof by the other party.

**8. SUB-CONTRACTORS.** After notice to Customer, Brooks reserves the right to deploy sub-contractors to perform the services required under this contract and to take responsibility for the work performed and any failures that might occur as a result.

**9. WARRANTY.** Repair and maintenance work performed under this Contract is covered by the terms of the Quotation. Any failure of a repair, covered under the Contract, due to part quality or workmanship

will be repaired by Brooks at no additional cost. Repairs completed within sixty (60) days of contract expiration will carry a sixty (60) day warranty from the completion of the repair. Failure of the repair, due to part quality or workmanship, within sixty (60) days of repair will be repaired at no additional cost. It is the Customer's responsibility to make a warranty claim.

The warranty does not apply if the System has been damaged by accident, abuse, misuse, acts of God, misapplication, the elements, failure of electrical power, the use of unauthorized parts or reagents, repairs by any person not authorized by Brooks, or unauthorized modification of the instrument.

**BROOKS AND ITS DISTRIBUTORS' SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE, AT BROOKS' SOLE DISCRETION, TO REPAIR OR REPLACE THE INSTRUMENT OR PART. THE ABOVE REMEDIES ARE AVAILABLE ONLY IF BROOKS IS PROMPTLY NOTIFIED IN WRITING, WITHIN THE WARRANTY PERIOD, UPON DISCOVERY OF FAILURE OF REPAIR BY CUSTOMER.**

EXCEPT FOR THE EXPRESS LIMITED WARRANTY STATED ABOVE, BROOKS AND ITS DISTRIBUTORS MAKE NO PROMISES, REPRESENTATION OR WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SUBJECT OF THIS CONTRACT INCLUDING THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND BROOKS AND ITS DISTRIBUTORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

**10. LIMITATION OF LIABILITY.** THE LIABILITY OF BROOKS AND ITS DISTRIBUTORS ARISING OUT OF OR RELATED TO THIS CONTRACT SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER TO BROOKS UNDER THIS CONTRACT. IN NO EVENT SHALL BROOKS OR ITS DISTRIBUTORS HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR LOSS OR INTERRUPTION OF USE OF ANY FILES, DATA OR EQUIPMENT, EVEN IF BROOKS OR ITS DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. CONFIDENTIALITY.** In the event that a separate and valid non-disclosure agreement is not effective between the Parties that covers the purpose of this Contract, the following terms regarding confidentiality shall apply.

The Customer shall hold in confidence during the term of this Agreement, and thereafter, any and all information of a confidential nature regarding Brooks', except that:

- (i) Information which is already generally available to the public.
- (ii) Information which hereafter becomes generally available to the public, through no fault of the Customer.
- (iii) Information which was already known to the Customer prior to the disclosure thereof.
- (iv) Information which is developed by the Customer independently of and without aid of the information received from Brooks.
- (v) Information which lawfully becomes known to the Customer through a third party which discloses such information to the Customer without breaching confidentiality obligations to Brooks.

(vi) Information which is disclosed pursuant to court order or as otherwise required by law, after giving Brooks notice of such required disclosure and after assisting Brooks in its reasonable efforts to prevent or limit such disclosure.

**12. OWNERSHIP AND RIGHTS IN DATA.** Unless otherwise specified in a separate written agreement for sale of a System or its components by Brooks to Customer, Brooks does not convey, nor does Customer obtain, any right in the technology, design, data or software utilized or developed by or for Brooks, whether such technology, design, data or software is developed specifically for performance of this order or otherwise. Brooks shall retain all rights and title to, ownership of, and interest in all intellectual property rights related to such technology, design, or data.

**13. SURVIVAL.** The expiration or termination of this Contract shall not relieve either Party of any liability which accrued prior to the termination or expiration date. The articles entitled "Definitions," "Payment," "Late Payment," "Confidentiality," "Governing Law and Forum," "Severability," "Order of Precedence," "Headings," "Counterparts" and "Entire Contract" in this Contract shall survive the termination or expiration hereof.

**14. FORCE MAJEURE.** Neither Party hereto shall be liable for default of any obligation hereunder (other than payment obligations) if such default results from the force majeure which includes, without limitation, governmental acts or directives; strikes; acts of God; war; insurrection, riot or civil commotion; fires, flooding or water damage; explosions, embargoes or delays in delivery, whether of the kind herein enumerated or otherwise, which are not within the reasonable control and without the negligence of the party affected.

**15. ASSIGNMENT.** This Agreement is not assignable or transferable by Customer in whole or in part, except with the written consent of Brooks. This Agreement and any of Brooks' rights and obligations hereunder may be assigned by Brooks, upon giving written notice to Customer.

**16. RELATIONSHIP OF THE PARTIES.** The parties hereto agree that Customer is not an agent or employee of Brooks. Customer has no expressed or implied authorization to incur any obligation or in any manner otherwise make any commitments on behalf of Brooks. Customer shall employ its own personnel and shall be responsible for them and their acts and in no way shall Brooks be liable to Customer, its employees or third parties for any losses, injuries, damages or the like occasioned by Customer's activities in connection with this Contract, except as expressly provided herein.

**17. GOVERNING LAW AND FORUM.** These terms and conditions shall be governed by enforced under and construed in accordance with the laws of the Commonwealth of Massachusetts for customers located in the U.S. (laws of the United Kingdom for all others) without regard to the conflict of law provisions thereof. For U.S. customers, the exclusive forum for the resolution of any disputes arising under or related to this Contract shall be in the courts of Suffolk County, Massachusetts and Customer irrevocably consents to personal jurisdiction in the courts of Suffolk County, Massachusetts.

**18. NON-WAIVER.** No waiver of any provision of this Contract or any rights or obligations of either party hereunder shall be effective except pursuant to a written instrument signed by the party or parties waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.

**19. SEVERABILITY.** In the event that any provisions hereof are found invalid or unenforceable pursuant to judicial decree or decision, the remainder of these terms and conditions shall remain valid and enforceable according to its terms. Without limiting the foregoing, it is expressly understood and agreed

that each and every provision of the terms and conditions which provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is intended by the parties to be severable and independent of any other such provision and to be enforced as such. Further it is expressly understood and agreed in the event any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages set forth herein shall remain in effect.

**20. ORDER OF PRECEDENCE.** In the event of a conflict between these Terms and Conditions and the Quotation, the Quotation shall have precedence.

**21. HEADINGS.** Headings in this Contract are for reference purposes only, and shall not be used to interpret or construe this Contract.

**22. ENTIRE CONTRACT.** This Contract is the entire Contract between the Parties respecting the subject matter herein, and supersedes all conflicting provisions on any Customer purchase order or Brooks' invoices or acknowledgement forms.