

# Standard Terms and Conditions of Sale – Products & Services

## Brooks Instrument LLC

June 2019

1. **Acceptance.** Brooks Instrument LLC is herein referred to as “Brooks” and the customer purchasing from Brooks is referred to as “Purchaser.” These terms and conditions of sale (“Terms”), any Brooks quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein (“Brooks Documents” and together with these Terms, the “Agreement”), constitute the complete terms governing the sale of products (“Products”) and services (“Services”). BROOKS HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER’S BUSINESS FORMS OR IN PURCHASER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not Brooks clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by Brooks or Purchaser’s acceptance of delivery of the Products or Services will manifest Purchaser’s assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of a Brooks Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of Brooks; (b) Brooks Document terms; (c) these Terms.

2. **Quotations.** Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser’s credit. Brooks may refuse orders and has no obligation to supply Products or Services unless Brooks issues an order acknowledgement and no customer credit or payment issues exist at the time of shipment.

3. **Prices and Payment Terms.** Prices are in U.S. Dollars and are subject to change without notice. All orders are accepted subject to Brooks’ price in effect at time of order acknowledgement. Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges (“Fees”) related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. If Brooks is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify Brooks for the same. Unless expressly stated in Brooks’ quotation, prices for Products do not include installation, start-up or maintenance of Products. Additional charges for schedule changes, premium delivery, storage, cancellations, and restocking may apply. Terms of payment are 30 days net from the date of Brooks’ invoice, except for applicable milestone payments or for shipments which Brooks may require other arrangements. If Purchaser fails to make any payment due hereunder, Brooks may either terminate the Agreement or suspend further deliveries under this and/or any other agreements with Purchaser. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify Brooks for all associated costs incurred by Brooks, including reasonable attorney fees and court costs.

4. **Credit Approval.** All shipments are subject to approval by Brooks’ credit department. Brooks may invoice Purchaser and recover for each shipment as a separate transaction. If, in Brooks’ sole judgment, Purchaser’s financial condition is or becomes unsatisfactory, then Brooks may, without prejudice to any of its other rights or remedies: (a) defer or decline to make any shipments except upon receipt of cash payments in advance; and/or (b) terminate any or all of Purchaser’s purchase orders.

5. **Cancellation or Modification.** Brooks may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of Brooks’ Products or Services upon reasonable prior written notice to Purchaser. Once Brooks has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with Brooks’ written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification pursuant to Brooks schedule for such charges. Once Products have shipped, such Products shall not be returnable except as covered under Brooks’ warranty set forth in Section 7 below.

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6. **Delivery.** Brooks anticipates use of common carriers for shipment of Products. All Products will be shipped FCA Brooks' facility (Incoterms 2010) unless otherwise agreed upon by the parties. Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. Brooks may ship items in a single or in multiple shipments. Title to the Products and risk of loss shall pass to Purchaser upon delivery in accordance with the applicable shipping term. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products after delivery. Brooks will not be liable for any loss occasioned by damage or shrinkage in transit, and claims for such loss must be made solely against the carrier.

7. **Warranty.** Subject to the limitations contained in Section 10 herein, Brooks warrants that the licensed firmware embodied in the Products will execute the programming instructions provided by Brooks, and that the Products manufactured by Brooks will be free from defects in materials or workmanship under normal use and care and Services will be performed by trained personnel using proper equipment and instrumentation for the particular Service provided. The foregoing warranties will apply until the expiration of the applicable warranty period. Sales of Products or Services are warranted for twelve (12) months from the date of shipment or the date of service, as applicable. Products purchased by Brooks from a third party for resale to Purchaser ("Resale Products") shall carry only the warranty extended by the original manufacturer. Purchaser agrees that Brooks has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Purchaser discovers any warranty defects and notifies Brooks thereof in writing during the applicable warranty period, Brooks shall, at its option and as its sole liability, correct any errors that are found by Brooks in the firmware or re-perform the Services or repair or replace F.O.B. point of manufacture that portion of the Products or firmware found by Brooks to be defective, or refund the purchase price of the defective portion of the Products and/or Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse, improper installation, modification, repair, use of unauthorized replacement parts, storage or handling, or any other cause not the fault of Brooks are not covered by this limited warranty, and shall be at Purchaser's expense. Brooks must be given a reasonable opportunity to investigate all warranty claims and alleged deficiencies. Brooks shall not be obligated to pay any costs or charges incurred by Purchaser or any other party. All costs of dismantling, reinstallation and freight and the time and expenses of Brooks' personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Purchaser. This limited warranty is the only warranty made by Brooks and can be amended only in a writing signed by Brooks. THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES. The Warranty against defects does not apply to: (1) consumable components or ordinary wear items; or (2) use of the Products with equipment, components or parts not specified or supplied by Brooks or contemplated under the Product documentation.

8. **Service Warranty.** Brooks warrants that (a) it will perform Services in a timely, competent and professional manner and in accordance with industry standards using proper equipment and instrumentation for the particular Service provided; and (b) the Services shall conform to any mutually agreed upon specifications or statements of work. Purchaser's sole remedy, and Brooks' sole liability, for a breach of the foregoing warranty is for Brooks, at its option, to re-perform the Services or credit Purchaser's account for such Services.

9. **Limitation of Liability and Remedies.** BROOKS WILL NOT BE LIABLE, AND PURCHASER WAIVES, AND SHALL CAUSE ITS CUSTOMERS TO WAIVE, ALL CLAIMS AGAINST BROOKS, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON BROOKS' NEGLIGENCE OR DELAY IN PERFORMANCE OR BREACH OF WARRANTY OR

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STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL BROOKS' LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF BROOKS' PRODUCTS AND/OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS AND/OR SERVICES AS TO WHICH THE CLAIM IS MADE.

10. **Product Use.** Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Brooks' Products, Brooks is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that Brooks believes to be reliable, but they are not guaranteed. UNLESS OTHERWISE SPECIFICALLY PROVIDED IN BROOKS' QUOTATION, PRODUCTS AND/OR SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Purchaser (i) accepts Products and/or Services in accordance with the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Brooks from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Products and/or Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Purchaser's liability is based on negligence or strict liability.

11. **Tooling/Molds/Dies.** All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of Brooks.

12. **Ownership of Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by Brooks and all rights therein (collectively, "Intellectual Property") will remain the property of Brooks and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to Brooks upon request from Brooks. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use Brooks' Products or receive the Services purchased from Brooks.

13. **Software and Firmware.** Notwithstanding any other provision herein to the contrary, Brooks or the applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Purchaser is hereby granted a non-exclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the Products only in conjunction with such Products and only at the Purchaser's plant site where the Products are first used. Purchaser's use of certain firmware (as specified by Brooks) and all other software shall be governed exclusively by Brooks' and/or third party's applicable license terms.

14. **Use of Trademarks and Trade Names.** Purchaser shall not use, directly or indirectly, in whole or in part, Brooks' name, or any other trademark or trade name that is now or may hereafter be owned by Brooks (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by Brooks in writing. Purchaser hereby acknowledges Brooks' ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by Brooks. Purchaser shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or

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any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Purchaser shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Purchaser shall provide reasonable cooperation to Brooks with respect to any efforts of Brooks to protect, defend or enforce its rights to the Trademarks. Should Purchaser cease being an authorized customer of Brooks for any reason, Purchaser shall immediately discontinue any formerly permitted use of Brooks' name or the Trademarks.

**15. Confidential Information.** All information furnished or made available by Brooks to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without Brooks' prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by Brooks; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to Brooks with respect to such information.

**16. Data and Documentation.** Brooks shall provide Purchaser with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Brooks, they shall be provided to Purchaser at Brooks' price then in effect. Data/documentation marked as confidential or proprietary may not be reproduced or used for any purpose other than the purpose for which it was provided and may not be disclosed to third parties without the prior written permission of Brooks. To the extent Brooks has relied upon any inadequate or inaccurate data/documentation supplied by Purchaser in the selection or design of the Products and/or provision of Services and the preparation of Brooks' quotation, any warranties or other provisions contained herein which are affected by such conditions are null and void.

**17. Audit.** Unless agreed to in writing by the Financial Officer of Brooks, neither Purchaser nor any Purchaser representative, may examine or audit Brooks' cost accounts, books or records of any kind or any matter, or any other data that Brooks, in its sole discretion, considers confidential or proprietary.

**18. Infringement and Indemnification.** Except as set forth below, Brooks agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of Brooks' proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies Brooks written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with Brooks in the defense and settlement of such Claim; and (c) Purchaser allows Brooks the right to defend and settle such Claim at Brooks' expense. If a suit or claim results in any injunction or order that would prevent Brooks from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of Brooks, otherwise cause Brooks to be unable to supply such parts or Products, Brooks may do one or more of the following: (i) secure an appropriate license to permit Brooks to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if Brooks cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in Brooks' sole discretion, Brooks may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, Brooks shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to: (1) the use of any part or Product, (2)

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the combination of any part or Product with any other part or product not supplied by Brooks, or (3) any part or Product or process that is designed or specified by Purchaser.

19. **Brooks Employees.** Brooks sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on Brooks or such Brooks employees.

20. **Service Terms.** The following terms and conditions apply to any on-site Services provided by Brooks:

A. Services will be provided at Brooks' then current service rates.

B. Purchaser shall prepare the site for the Services. If the site is not prepared for the Services upon Brooks service personnel's arrival at the agreed upon time and date for Services, Brooks may charge Purchaser for any delay and/or travel time at Brooks' regular service rates.

C. Purchaser shall provide Brooks with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses that are applicable to Purchaser's local jurisdiction.

D. Brooks may refuse, without any liability, to provide Services and to allow Brooks service personnel to suspend Services or vacate any site where, in Brooks' opinion, performance of Services would pose a risk to the safety of any person. In such event, Purchaser is responsible for payment of any delay and/or travel time at Brooks' regular service rates.

E. Purchaser is solely liable for all damages or injuries caused or contributed to by Purchaser that may occur on the site, except to the extent damages or injuries are directly caused by the gross negligence or willful misconduct of Brooks' service personnel.

F. Purchaser must provide at least 48-hours' notice of cancellation of any Service order. If Purchaser cancels with less than 48-hours' notice, Purchaser is responsible for any costs incurred by Brooks caused by such cancellation.

21. **Compliance.** Purchaser agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws.

22. **Relationship of the Parties.** Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

23. **Force Majeure.** Brooks will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, failure or interruption of computer or telecommunication systems, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Brooks' employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Brooks to perform.

24. **Assignment; Binding Effect.** No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or Purchaser's purchase order may be made without Brooks' prior written consent. Any attempted assignment will be void. Brooks may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

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25. **Waiver.** In the event of any default by Purchaser, Brooks may decline to ship Products or provide Services. If Brooks elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Brooks' actions will not constitute a waiver of Purchaser's default or any other existing or future default, or affect Brooks' legal remedies.

26. **Bankruptcy.** If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

27. **Limitation of Actions/Choice of Law/Litigation Costs.** Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the Commonwealth of Pennsylvania and litigated exclusively in a state or federal court located in Philadelphia County, Pennsylvania. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

28. **Survival.** Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

29. **Severability.** If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

30. **Integration and Modification.** The Agreement constitutes the entire agreement between Brooks and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.