

**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. Quotation shall mean a formal statement issued by Seller to Customer setting out the estimated cost for service. 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. This is the complete and exclusive statement of the Contract between Seller and Customer with respect to Customer's purchase of the services. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Customer. Seller's failure to object to terms contained in any subsequent communication from Customer will not be a waiver or modification of the terms set forth herein. Customer's issuance of an order to Seller or Seller's commencement of the services set forth in the Quotation will constitute Customer'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 Seller's 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 Seller 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 Contracts 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. Payment for annual service Contracts are due in full at the start of each Contract year. Customer shall pay Seller's 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. Customer 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 Customer 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 Seller's 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 Seller's products 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 Seller 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 thirty (30) days after written notice thereof by the other party.

**8. SUB-CONTRACTORS.** After notice to Customer, Seller 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 Seller 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 Seller's product 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 Seller, or unauthorized modification of the instrument.

SELLER AND ITS DISTRIBUTORS' SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE, AT SELLER'S SOLE DISCRETION, TO REPAIR OR REPLACE THE INSTRUMENT OR PART. THE ABOVE REMEDIES ARE AVAILABLE ONLY IF SELLER 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, SELLER 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 SELLER AND ITS DISTRIBUTORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

**10. LIMITATION OF LIABILITY.** THE LIABILITY OF SELLER AND ITS DISTRIBUTORS ARISING OUT OF OR RELATED TO THIS CONTRACT SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER TO SELLER UNDER THIS CONTRACT. IN NO EVENT SHALL SELLER 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 SELLER OR ITS DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. CONFIDENTIALITY.** The parties shall hold in confidence during the term of this Contract, and thereafter, any and all information of a confidential nature regarding Seller or Customer's business or affairs, including without limitation, data provided or made available by Seller or Customer, and shall not disclose the same to any person, firm or corporation, nor use such information except as contemplated herein or as otherwise required by applicable law. The following information shall not be considered confidential:

(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 Seller.

(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 Seller.

(vi) Information which is disclosed pursuant to court order or as otherwise required by law, after giving Seller notice of such required disclosure and after assisting Seller 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 Seller product or its components by Seller to Customer, Seller does not convey, nor does Customer obtain, any right in the technology, design, data or software utilized or developed by or for Seller, whether such technology, design, data or software is developed specifically for performance of this order or otherwise. Seller 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 following articles of this Contract shall survive termination or cancellation of the Contract: Articles 4, 5, 10, 11, 12, 13, 17, 20, 21 and 22.

**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 Seller. This Agreement and any of Seller's rights and obligations hereunder may be assigned by Seller, upon giving written notice to Customer.

**16. RELATIONSHIP OF THE PARTIES.** The parties hereto agree that Customer is not an agent or employee of Seller. Customer has no expressed or implied authorization to incur any obligation or in any manner otherwise make any commitments on behalf of Seller. Customer shall employ its own personnel and shall be responsible for them and their acts and in no way shall Seller 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 Seller's invoices or acknowledgement forms.