

Service Terms and Conditions

1. Service Program.

Brooks Automation US, LLC or the Brooks Automation US, LLC affiliate or subsidiary listed on the quotation ("Brooks") will provide the customer on the Brooks quotation ("Customer") with the elements of the service program described in the Brooks quotation ("Service") which these terms are incorporated into in its entirety. These Service Terms and Conditions and any Customer confidentiality and nondisclosure agreement between the parties, shall be the entire agreement between the parties regarding the Service and shall be the sole terms and conditions, superseding all proposals, oral or written, and all other communications between the parties relating to the subject matter of these Service Terms and Conditions. No other terms and conditions, including, but not limited to, those in Customer's purchase order or other purchase document, or Brooks' invoicing or billing documents, shall apply and are null and void unless expressly incorporated into these Service Terms and Conditions in writing by the parties. Brooks' written acknowledgement of Customer's purchase order shall not be deemed to be such a written agreement. These Service Terms and Conditions shall be read and interpreted in the English language.

2. Service Fees.

2.1 Customer agrees to pay Brooks for the Services in accordance with price schedules set forth in a written quotation provided to Customer by Brooks.

2.2 Customer must pay any applicable export, import, and insurance charges on items shipped to Customer as part of the Service; and sales, use, excise, privilege, value-added and other taxes or charges imposed by any government authority (collectively, "Other Charges"). If Customer provides Brooks with a permit indicating that Customer is permitted to pay sales and use tax directly to the taxing authority or is exempt from sales and use tax, Brooks shall not invoice Customer for or collect from Customer any sales and use taxes.

2.3 At the end of any Service period on the Brooks quotation, subject to Customer's payment of the applicable Service fees, Brooks will continue to provide Services to Customer on a month-to-month basis until either party terminates these Service Terms and Conditions upon at least ten days' written notice to the other party, effective at the end of the calendar month.

3. Invoicing and Payment.

3.1 Brooks will invoice Customer on a monthly basis for Services as specified in the Brooks quotation. The initial invoice shall contain pro-rated charges for any partial month of Service. Customer shall timely pay the Service fees detailed in the quotation within thirty (30) days of the invoice date, unless otherwise stated on the quotation. Notwithstanding the foregoing, all payments for training are due in full on the first day of training. Customer must pay the entire amount of each Brooks invoice without offset or deduction.

3.2 Customer agrees to reimburse Brooks for fees and expenses, including reasonable attorney's fees incurred by Brooks in collecting, or attempting to collect any charges owed hereunder.

3.3 With advanced written approval by Customer, Customer will reimburse Brooks for all reasonable and actual travel and living expenses incurred by the Service provider when performing agreed upon services that are outside the scope of the quotation. In addition, with advanced written approval by Customer, the Customer will reimburse Brooks for special or unusual expenses incurred at the Customer's specific request.

4. Product Returns.

4.1 In order to return Brooks equipment ("Equipment") for repair, exchange, Equipment exchanged under these Service Terms and Conditions, or otherwise, Customer must obtain a Return Material Authorization ("RMA") number from Brooks and comply with Brooks' shipping instructions. All returned Equipment must be shipped in original (or equivalent) shipping cartons, complete with all packing materials, to the location specified by Brooks. The RMA number must be prominently marked on the outside of the shipping box. EFEM's may only be returned to Brooks with Brooks' prior written consent.

4.2 A completed Health and Safety Certificate must be enclosed with all returned Brooks products (herein the "Equipment"), and separately faxed to Brooks upon shipment. Customer acknowledges that Brooks will not accept any Equipment exposed by Customer to biological hazards, radioactive material, organic metal or mercury that results in a hazardous condition or other hazards so determined by Brooks that are present in the Equipment ("Unacceptable Hazards"). Customer shall indemnify, defend and hold harmless Brooks against, claims or losses relating to personal injury, property damage, or disposal, or clean-up arising from returned Equipment containing Unacceptable Hazards or undeclared contaminants. Brooks will return to Customer, freight collect: a) Equipment shipped without an RMA number or b) Equipment shipped without a complete Health and Safety Certificate, or exposed to Unacceptable Hazards. Note: Equipment shipped to Brooks without Brooks' written agreement may either be a) returned to Customer at Customer expense, or b) determined Customer abandoned Equipment and disposed of by Brooks. Customer shall be invoiced and pay Brooks' Equipment disposal charges for Customer abandoned Equipment. The Customer shall comply with all regulations and laws and be responsible for all fees and costs relating to the disposal and/or recycling of Customer owned Brooks Equipment.

5. Shipments.

5.1 Unless otherwise stated on the Brooks quotation, shipping terms are FCA Origin – Shipper's Dock Chelmsford, Massachusetts or other applicable Brooks' facility. Special packaging requirements requested by Customer will be at Customer's expense. Unless

specified by Customer, Brooks will select the carrier, delivery route, and method of packing and shipment.

5.2 Equipment returned to Brooks shall be shipped FCA Origin – Shipper's Dock, shipment and risk of loss shall be the Customer's responsibility.

5.3 Export:

(a) Customer hereby agrees: (i) to assist Brooks in obtaining any required export licenses or permits by supplying such documentation or information as may be requested by Brooks; (ii) to comply with such decrees, statutes, rules and regulations of the government of the United States and agencies or instrumentalities thereof; (iii) to maintain the necessary records to comply with such decrees, statutes, rules and regulations; (iv) not to re-export any Equipment except in compliance with such decrees, statutes, rules and regulations; (v) to obtain all governmental approvals and licenses necessary to import the Equipment; (vi) not to sell, transfer or otherwise dispose of the Equipment in violation of the export laws of the United States; and (vii) to indemnify, defend and hold harmless Brooks from any and all fines, damages, losses, costs and expenses (including reasonable attorneys' fees) incurred by Brooks as a result of any breach of this Section 5 by Customer.

(b) Customer hereby expressly acknowledges that the technical data and the direct product thereof contained in the Equipment may be subject to export controls of the United States and agrees that neither such technical data nor the direct product thereof will be transferred, directly or indirectly, to any destination contrary to the requirements of the law of the United States, including but not limited to the terms of any export license and the terms of Part 774 (re-exports) of the U.S. Export Administration Regulations. Further, Customer hereby provides its assurance that it will not participate in any transaction which may involve any commodity or technical data, or the direct product thereof, exported or to be exported from the United States, or in any re-export thereof, or in any other transaction that is subject to export controls of the United States, if a person denied export privileges from the United States may obtain any benefit from or have any interest in, directly or indirectly, these transactions.

6. Limited Warranties.

6.1 Service will be provided by skilled personnel in a professional manner and consistent with industry standards.

6.2 The warranty for quoted and functional repairs shall be ninety (90) days from completion. The warranty for upgrades shall be ninety (90) days from completion, unless otherwise quoted by Brooks. The warranty for non-serialized parts is ninety (90) days from shipment. The warranty for serialized parts is twelve (12) months from shipment. The warranty for consumable parts is thirty (30) days from shipment.

6.3 Repair of any damage due to use of the Equipment in a manner that is not in keeping with the usual and customary use is beyond the scope of these Service Terms and Conditions and will require a separate order to repair the damaged equipment on a time and materials basis.

6.4 Brooks Equipment warranty will be as detailed in Brooks Standard Terms and Conditions of Sale.

6.5 The exclusive remedies for breach of warranty will be either repair or replacement of the nonconforming Equipment at the sole discretion and expense of Brooks. Customer must notify Brooks within 30 days of discovering a material defect, and must issue a purchase order for the release of any exchange Equipment. Brooks will invoice an exchange fee against this purchase order if the nonconforming Equipment is not returned within the exchange return period.

6.6 BROOKS' MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. CUSTOMER'S SOLE REMEDY IN CASE OF BREACH OF WARRANTY SHALL BE AS SET FORTH IN THIS SECTION 6. BROOKS SHALL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED WORK DONE BY OTHERS OR FOR ANY LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF OR RESULTING FROM SUCH WORK, UNLESS AUTHORIZED IN WRITING IN ADVANCE BY BROOKS.

7. Intellectual Property.

Brooks warrants that the Equipment and Service specified herein and their sale, use or existence will not infringe any United States or foreign patent, copyright, trademark, trade secret or other intellectual property right ("Infringement"). If the sale, use or existence of any Equipment or Service constitutes Infringement and their use is enjoined or threatened to be enjoined, Customer may require Brooks, at Brooks' option either to procure for Customer the right to continue using such Equipment or Service, to modify such Equipment or Service so that they become non-infringing or to remove such Equipment or cease such Service and refund to Customer the total purchase price thereof. Notwithstanding the foregoing should any third party assert a claim or commence an action against Customer as a result of Customer's use of, or incorporation of Brooks Equipment into Customer products or Customer's use of Brooks Service, Brooks agrees to indemnify, defend and hold Customer harmless from the action or claim and to pay any resulting costs, damages, loss or liability (including amounts paid in settlement) incurred by Customer. Such indemnity will only be effective if Customer: (a) promptly notifies Brooks after Customer receives notice of such a claim; (b) gives Customer complete authority over defense or settlement of same (unless such settlement will materially affect Customer's ability to use Equipment, in which case, any settlement must first be approved by Customer in writing); and (c) at Brooks' expense, provide Brooks with such assistance as it reasonable requires in the defense of the action. The foregoing warranty and indemnity shall not apply if the case of the infringement is the combination of Brooks' product with another by Customer, modification to Brooks' product by Customer, or product developed in accordance with a specification prodded by Customer.

8. 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; epidemics; explosions, embargoes or delays in delivery, whether of the kind herein enumerated or otherwise, which are not within the reasonable control of the party affected. To the extent that, and so long as the obligations of either party are affected by any such cause or event, such obligations shall be suspended.

9. Termination for Default.

9.1 Customer may terminate these Service Terms and Conditions at any time by giving Brooks a ninety (90) day written notice of cancellation and paying a one-time "Service Recovery Charge" and an "Early Termination Charge", each as defined below:

- a. "Service Recovery Charge" will equal the total value of all Monthly services delivered by Brooks during the Initial Service Period, up to the date of termination, for each tool under Service, less any related Monthly service fees previously paid by the Customer.
 - i. The total value of all Services delivered by Brooks shall be calculated as the number of monthly periods that commenced during the Services time period specified in the Brooks quotation multiplied by the monthly Service rate defined in the payment schedule (with the last month pro-rated by the number of days occurring up to the date of termination).
- b. The "Early Termination Charge" shall include a resource recovery charge equal to one monthly payment of the Service fee to partially offset the cost of reassigning the Brooks resource.

9.2 Brooks may terminate the Services at any time by giving Customer a ninety (90) day written notice of cancellation. For purposes of further clarity, in the event of Brooks terminating the Services, the Customer is not required to pay the Early Termination Charge. Brooks may terminate Service prior to the expiration of the Services on written notice to Customer, upon the happening of any of the following events:

- i. Customer fails to follow operating and maintenance procedures recommended by Brooks for the Equipment, and such failure continues for thirty (30) days after written notice from Brooks, or integrates another party's components into the Equipment, and such occurrence is not cured within sixty (60) days after written notice from Brooks; or
- ii. Customer is in default of its obligations hereunder, and such default continues for thirty (30) days following receipt of written notice from Brooks.

9.3 No termination for default by Customer shall be effective unless and until Brooks shall have failed to correct such alleged default within sixty (60) days after receipt by Brooks of a written notice specifying such defaults. Notwithstanding anything elsewhere to the contrary, Brooks shall not be liable for any charges incurred by Customer in case of Customer's default or Brooks' termination by reason of Customer's default, including, without limitation, re-procurement and cover costs. In the event that Customer terminates the Services for Brooks default, Customer shall be liable to pay the Service Recovery Charge as defined above, but no Early Termination Charge.

10. Non-Solicitation

During the term of these Service Terms and Conditions and for a period of twelve (12) months after its termination or expiration, Customer shall not, without the prior written consent of Brooks, directly or indirectly, on its' own behalf or in the service or on behalf of or in conjunction with any person or legal entity, recruit, solicit induce or attempt to recruit, solicit or induce, or hire away any person employed by Brooks that is in any manner a participant in the performance of these Service Terms and Conditions.

11. Limitation of Liability and Exclusive Remedy.

11.1 THE MAXIMUM LIABILITY OF BROOKS ARISING OUT OF OF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THESE SERVICE TERMS AND CONDITIONS, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, TRADE PRACTICES OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PAYMENTS RECEIVED BY BROOKS FROM OR IN CONNECTION WITH THE TRANSACTION. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, AND EACH PARTY HEREBY WAIVES ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA) DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THESE SERVICE TERMS AND CONDITIONS, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS DISCLOSED TO EITHER PARTY.

11.2 Each Party's liability on any claim of any kind for any loss or damage arising out of, connected with or resulting from these Service Terms and Conditions, or from the performance or breach thereof, shall in no case exceed three times (3x) the amount payable by Customer to Brooks pursuant to the quotation. Any action resulting from any breach on the part of Customer as to the Equipment serviced hereunder must be commenced within one (1) year after the cause of action has accrued.

11.3 The limitations, exclusions and disclaimers set out in these Service Terms and Conditions shall apply; (a) whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, tort (including negligence), strict liability or any other kind of civil or statutory liability connected with or arising out of these Service Terms and Conditions; (b) to each Party and its affiliated companies as well as each Party's and such affiliated companies' director, officers, employees, and independent contractors.

11.4 Some jurisdictions do not allow limitation or exclusions of certain types of damages and/or of implied conditions or warranties. The limitations, exclusions, and disclaimers set forth in these Service Terms and Conditions shall not apply only if and to the extent that the laws of a competent jurisdiction required liabilities beyond and despite these limitations, exclusions, and disclaimers.

11.5 Notwithstanding the foregoing, the limitations of liability set forth in subsection Section 11.1 and 11.2 shall not apply to each party's obligations and liabilities under Sections 7 (Intellectual Property) or a violation of either party's obligations under any confidentiality and nondisclosure agreement.

12. Training.

12.1 Training shall be in accordance with the Brooks quotation.

12.2 BROOKS DISCLAIMS ALL WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE TRAINING AND DOCUMENTATION, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.3 Customer may only cancel a training with two weeks prior written notice to Brooks. If such notice is not provided more than two weeks before the training, Customer will be required to pay 25% of the Brooks quoted price for the training.

12.4 Customer shall not copy or otherwise reproduce any materials in whole or in part without Brooks prior written consent.

12.5 Customer agrees not to sell, transfer, or otherwise dispose of any training documentation in violation of any applicable export control laws.

13. Confidentiality.

The Parties shall hold in confidence during the term of these Service Terms and Conditions, and thereafter, any and all information of a confidential nature regarding Brooks' or Customer's business or affairs, including without limitation, data provided or made available by Brooks 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 receiving party.
- (iii) Information which was already known to the receiving party prior to the disclosure thereof.
- (iv) Information which is developed by a party independently of and without aid of the information received from the other party.
- (v) Information which lawfully becomes known to a party through a third party which discloses such information to the receiving party without breaching confidentiality obligations to the disclosing party.
- (vi) Information which is disclosed pursuant to court order or as otherwise required by law, after giving the disclosing party notice of such required disclosure and after assisting the disclosing party in its reasonable efforts to prevent or limit such disclosure.

14. Choice of Law and Arbitration.

14.1 These Service Terms and Conditions shall be governed by the laws of Commonwealth of Massachusetts, United States of America without reference to its choice of law principles. Each party irrevocably consents to the jurisdiction of the federal and state courts of Commonwealth of Massachusetts. The parties specifically agree that the United Nations Convention on Contracts for the International Sale of Good shall not apply to these Service Terms and Conditions.

14.2 All disputes arising out of or relating to these Service Terms and Conditions shall be finally resolved by arbitration conducted in the English language in Boston Massachusetts, U.S.A. under the commercial arbitration rules of the American Arbitration Association. Each party shall appoint an arbitrator and the two arbitrators so appointed shall jointly appoint a third arbitrator; provided, however, that if they cannot agree (or if one party refuses to appoint an arbitrator), then this third arbitrator shall be appointed by the President of the American Arbitration Association. Both parties shall bear equally the cost of the arbitration. All decisions of the arbitrator(s) shall be final and binding on both parties and enforceable in any court of competent jurisdiction. Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement. Notwithstanding anything contained in this Section to the contrary, Brooks shall have the right to institute judicial proceedings against Customer or anyone acting by, through or under Customer, in order to enforce Brooks' rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.

15. Survival Clauses.

The following provisions will survive the expiration or termination of the transaction contained under these Service Terms and Conditions: Section 2 (Service Fees), Section 3 (Invoicing and Payment), Section 6 (Limited Warranties), Section 7 (Intellectual Property), Section 8 (Force Majeure), Section 10 (Non-Solicitation) Section 11 (Limitation of Liability and Exclusive Remedy), Section 13 (Confidentiality), Section 14 (Choice of Law), Section 15 (Survival Clauses) and Section 16 (General).

16. General.

16.1 Customer agrees to perform in a timely manner the mutually agreed-upon recommended actions provided by Brooks to optimize tool performance.

16.2 Assignment. Neither these Service Terms and Conditions, nor individual transactions hereunder, shall be assigned by either party without the prior written consent of the other party and any attempted assignment shall be void. Consent, however, shall not be unreasonably withheld, delayed or conditioned.

16.3 Independent Contractor. Brooks is an independent contractor and not an employee, agent or representative of Customer and no partnership or joint venture is hereby created or implied under these Service Terms and Conditions.

16.4 Counterparts. These Service Terms and Conditions may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16.5 Headings. Headings in these Service Terms and Conditions are for reference purposes only, and shall not be used to interpret or construe these Service Terms and Conditions.

16.6 Entire Agreement. These Service Terms and Conditions constitute the entire agreement between the parties with regard to the matters dealt with herein, and supersedes all prior representations, negotiations, understandings and agreements, oral or written, between the parties with respect thereto. All purchase orders, forms of acceptance, invoices and other documentation respecting the subject matter of these Service Terms and Conditions issued by Customer shall be deemed to be issued for its own internal purposes, and any provisions therein that are in addition to the terms of these Service Terms and Conditions shall be of no force and effect except and to the extent the information contained therein is, consistent with and required pursuant to these Service Terms and Conditions. These Service Terms and Conditions shall not be modified or amended except in a written agreement signed by both parties.

16.7 Waiver. The failure of Customer or Brooks to enforce any of the terms or conditions of these Service Terms and Conditions shall not be deemed a waiver of any right to enforce these Service Terms and Conditions.

16.8 Separability. In case any one or more of the provisions, or portions of provisions, of these Service Terms and Conditions shall be deemed by any governmental authority to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions, or portions of provisions, contained herein shall not be in any way affected or impaired thereby.

16.9 Relationship of Parties. The parties hereto agree that Customer shall operate as an independent contractor and 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 these Service Terms and Conditions, except as expressly provided herein.