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 conditions on OEM's Purchase Order do not apply unless expressly agreed to in writing by Brooks. A standard Brooks order acknowledgment form will not be considered to be such a writing. If Brooks does expressly agree in a writing, the writing applies only to the order that it references. Brooks and OEM hereby agree to exclude application of the Uniform Commercial Code.

In consideration of the mutual covenants contained in this Agreement, Brooks and OEM agree as follows:

1.   DEFINITIONS
In this Agreement,

(a)   "Application System" shall mean the final Product that includes substantial value added by the OEM.

(b)   "Customer" shall mean the customer who purchases the Products from OEM or to whom OEM licenses the Products.

(c)   "Enhancement" shall mean modifications, refinements and improvements that Brooks makes to the Software and which Brooks elects to incorporate into and make a part of the Software and does not separately market. Brooks reserves the right to determine which modifications, refinements and improvements will constitute Enhancements.

(d)   "Equipment" shall mean a hardware device that supports only one (1) user of the Software, per license, at any given time, a subassembly of such device, or a spare part for such device.

(e)   "Lead Time" shall mean the period of time from Brooks acceptance of the Purchase Order to the Product delivery date.

(f)   "Order Acknowledgement Form" shall mean Brooks written confirmation that an order is received.

(g)   "Products" shall mean all products manufactured or distributed by Brooks, including Equipment, Software and any related documentation and services.

(h)   "Purchase Order" shall mean a firm written purchase order placed by OEM for the purchase of Products.

(i)   "Software" shall mean Brooks proprietary computer software programs, firmware and Third Party Software, in machine readable object code form only, intended to be used solely on and with the Equipment supplied or designated by Brooks hereunder, and includes any Enhancements provided by Brooks to OEM pursuant to the terms of this Agreement.

(j)   "System" means the control systems that consist of Equipment and Software; the precise type and quantity of which, that are subject to this Agreement, are set forth on the quotation accompanying this Agreement.

(k)   "Third Party" means a party other than Brooks, herein also called the "Licensor".

(l)   "Third Party Equipment" shall mean a hardware device manufactured by a Third Party.

(m)   "Third Party Software" shall mean Third Party proprietary computer software programs and firmware, in machine readable object code form only, intended to be used solely on and with the Third Party Equipment supplied or designated by Brooks hereunder.

2.   LIMITATIONS
The Products will not be resold, leased or subleased, licensed or sublicensed by OEM without substantial value being added by OEM to form an Application System. OEM may only integrate into its Application Systems those copies of the Software which have been provided by Brooks and shall not reproduce the Software in whole or in part, in any form, for this purpose.

3.   ORDER ACKNOWLEDGEMENT FORMS

(a)   General
The sales contract for the Products between Brooks and OEM, shall be made by means of OEM placing a Purchase Order and Brooks acknowledging an acceptance thereto in writing through an Order Acknowledgement Form. No order will be binding on Brooks or OEM until so confirmed.

(b)   Terms and Conditions
Each Order Acknowledgement Form shall be subject to the terms and conditions stated herein. All other terms or conditions of purchase, sale or otherwise shall be binding only with the specific written mutual consent of the parties. In the event of a conflict or overlap between this Agreement and the provisions of an Order Acknowledgement Form or other related agreement, the provisions of this Agreement shall control. The parties acknowledge that quantities, price and delivery schedules will vary with each order as shall be agreed to by the parties at the time of such order.

(c)   Cancellation
Orders in process may be canceled only with Brooks' prior written consent and upon payment of Brooks' cancellation charges, which may include a restocking charge.

(d)   Changes
Orders in process may not be changed except with Brooks' prior written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor.

4.   PRICE
OEM agrees to pay Brooks for the Products purchased or licensed pursuant to the relevant Purchase and Order Acknowledgement Form in accordance with price schedules then in effect when Brooks delivers such Order Acknowledgement Form to OEM. Prices are valid only if OEM submits its Purchase Order to Brooks within the validity period specified in the sales quotation provided by Brooks. Brooks will retain a security interest in the Products until the purchase price is paid in full. OEM will execute such further documentation as Brooks requests in order to carry out the intent of the previous sentence.

5.   TERMS OF PAYMENT

(a)   The total price for the Products shall be invoiced by Brooks upon shipment of such Products. The payment for the Products shall be made by OEM to Brooks within thirty (30) days after the date of invoice issued by Brooks. Late payments made by OEM shall be subject to interest of one and one-half percent (1.5%) per month for each month or portion thereof during which such payment is late. OEM shall also be responsible for reasonable attorneys' fees and other costs of collection, if any, incurred by Brooks in attempting to collect any amounts due from the OEM. Brooks reserves the right to require from the OEM full or partial payment in advance, or other security, that is satisfactory to Brooks, at any time that Brooks believes in good faith that the OEM's financial condition does not justify the terms of payment specified. All claims for monies due or to become due from the OEM under this Agreement are subject to deduction by Brooks for any setoff or counterclaim that Brooks may have against the OEM.

(b)   Taxes, in any country, now or hereafter imposed with respect to the transactions contemplated hereunder (with the exception of income taxes or other taxes imposed upon Brooks and measured by the gross or net income of Brooks) shall be the responsibility of OEM, and if paid or required to be paid by Brooks, the amount thereof shall be added to and become a part of the amounts payable by OEM hereunder.

(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 to notify Brooks when shipment is to be made.

7.　　TESTING

(a)　　**Testing by Brooks**

Brooks shall test the Products before shipment in accordance with Brooks' standard test procedure. OEM may attend such Product testing, or if OEM fails to attend, shall be deeemed to have waived its right to observe such testing. Unless otherwise mutually agreed, the Products are deemed to be accepted by OEM upon completion of testing by Brooks.

8.　　WARRANTY AND SERVICES

(a)　　Warranty

(i)　　Brooks shall warrant the Products to be free from defects caused by faulty materials or poor workmanship and to conform to specifications furnished or approved by Brooks for fifteen (15) months from the date of shipment from Brooks to OEM as set forth in Article 6(a) hereof, except that:

Spares and Field Replaceable Units (FRUs) carry a warranty from the Brooks shipment date per the following schedule:

Non-Serialized Parts	90 Days
Serialized Parts	12 Months
Consumable Parts	30 Days

Unless otherwise noted, Depot Repaired products carry a warranty from the Brooks shipment date per the following schedule:

Quoted & Functional Repair	90 Days
Refurbishment & Enhanced Repair	12 Months

If any non-conformities are found in the Products by OEM or the Customers, and promptly reported to Brooks in writing, during the warranty period, Brooks shall provide OEM or the Customers with the services described in paragraph (iv) below, at no charge ("Warranty Services"). The Warranty Services of this paragraph (i) shall only be provided during Brooks' local normal business hours with initial response time of next business day and at a Brooks facility selected by Brooks. OEM will pay the cost of shipping Products for Warranty Services from OEM's site or Customer's site to Brooks and the cost of shipping repaired or replaced Products from Brooks to OEM's site or Customer's site. All returns must be received by Brooks within 21 days of the shipment date of the replacement product to avoid being assessed a charge equal to the prevailing list price of the Product in question. Should Brooks deem it necessary, Brooks will provide the Warranty Services at OEM's site and at no charge for parts, labor or travel. On-site support response will be provided on a reasonable basis, when on-site support is deemed necessary by Brooks. Alternatively, should Brooks deem it necessary, Brooks will provide the Warranty Services at Customer's site at no charge for parts, but at OEM's expense for labor and travel expenses. Warranty labor provided by Brooks includes only time spent actively troubleshooting, investigating and replacing defective material including nominal stand-by time. Labor for excessive wait and stand-by times will not be covered under warranty and will be billed at Brooks' prevailing field service rates. Brooks technical support team may troubleshoot by phone and provide non-comsumable parts to restore the functionality of the Product in the field. The Warranty Period does not restart for Products repaired during warranty.

(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 technical manuals. Brooks shall provide "second level" support and will visit the OEM or End User site for labor.

(iii)   THE FOREGOING WARRANTY IN PARAGRAPH (i) ABOVE IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN BROOKS WITHOUT BROOKS' PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY BROOKS, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

(iv)   Brooks's liability hereunder in any case is expressly limited to the replacement (but not installation) of components or subcomponents of the Products not complying with this Agreement or at Brooks' election, to the repayment of, or crediting OEM (or Customers, as applicable) with, an amount equal to the amounts received by Brooks for such Products, whether such liability is for breach of warranty or negligence. Replacement part will be new or like-new equivalent parts. All replaced parts will become the property of Brooks or its representative on an exchange basis. The warranty under paragraph (i) above shall not apply to any Product which shall have been: (a) repaired or altered other than by Brooks or its authorized or approved service personnel; (b) subjected to physical or electrical or other environmental abuse or misuse, including, without limitation, improper storage or installation which is not in accordance with Brooks' specifications; (c) operated in any manner inconsistent with the applicable Brooks instructions for use; or (d) defective for any reason not attributable to Brooks. Corrective services of any nature required from Brooks, or its representatives, for the Products due to inadequate or inaccurate information supplied by OEM, changes in OEM's business requirements, or any of the conditions listed in the previous sentence, are not included as part of the Brooks obligations or warranties, and will be provided, depending on available resources, at Brooks' then current rates. Brooks' obligation under any warranty does not include, and Brooks shall not have any liability for, any work required to restore or rebuild files or other data or material destroyed due to System malfunction. Unless otherwise agreed in writing, the warranty does not include onsite research and development (R&D) or engineering support, application changes, preventive maintenance, training, upgrades, continuous improvement projects (CIPs) and software containing major enhancements or significant new functionality. Warranty Services may be performed by Brooks' subsidiaries, branches or distributors ("Agent").

(b)   Installation and Training

Brooks shall provide installation, installation assistance and training only to the extent expressly provided herein, or in a statement of work referencing this Agreement. Except as expressly provided, site preparation and installation are the sole responsibility of the OEM. Brooks does not accept responsibility for the connection of the Systems to non-Brooks OEM products. Should OEM connect or request Brooks to connect the Systems to any non-Brooks OEM products, Brooks shall have no liability for any malfunction or damage which may result.

(c)   Post-Warranty Services

Post-Warranty services provided to OEM by Brooks for Brooks Products, shall be provided in accordance with the then-applicable Brooks terms and conditions of field service labor services.

9.   RETURN MATERIAL AUTHORIZATION NUMBER

If OEM returns the Products to Brooks subject to Article 8 above, OEM shall request a Return Material Authorization number from Brooks.

10.   INFRINGEMENT

(a)   For Brooks Products, only, and subject to the limitations of liability stated in Section 12, Brooks agrees to: (1) defend any suit or proceeding against OEM, insofar as it is based on a claim or action by third parties alleging that a Brooks Product delivered to OEM directly infringes a U.S. trademark, copyright, mask works right or patent of a third party, and (2) pay all damages and costs, including legal fees, which may be assessed against OEM in such action that are attributable to such claim; provided, however, that OEM shall give Brooks 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 Brooks' own choice and under Brooks' sole discretion and at Brooks' own expense, and will make available to Brooks in the event of such election, all defenses against such claims or actions, known or available to OEM. If a Brooks Product become (or in Brooks' reasonable opinion is likely to become) the subject of any such action or claim, Brooks shall, at its option and expense, pursue one or more of the following options:

(i)   Procure for OEM the right to continue using such Brooks Product; or

(ii)   Replace or modify such Brooks Product so that it becomes non-infringing while providing equivalent performance; or

(iii)   in the event (i) and (ii) are not practical, refund to OEM the amortized amounts paid by OEM with respect thereto, based on a five (5) year amortization schedule.

Notwithstanding the above, Brooks shall not be obligated to indemnify or hold harmless OEM if the alleged infringement arises out of : (1) any combination of Brooks Products with products not supplied or approved in writing by Brooks, where such infringement would not have occurred but for such combination; (2) the modification or customization of Brooks Products not performed by Brooks, where such infringement would not have occurred but for such modification or customization; (3) the use of a Brooks Product in an application for which it was not designed or intended, where such infringement would not have occurred but for such use; (4) a claim based on intellectual property rights owned by OEM or any of companies controlled by, controlling or under common control with OEM; or (5) where the Brooks Products were designed by Brooks to OEM's specification. Contributory infringement is specifically excluded from this indemnity.

This Article 10(a) states OEM's sole and exclusive remedy in the event that a Brooks Product infringes on the intellectual property right of any third party.

(b)   In the event a claim is based partially on an indemnified claim described in Article 10(a) above and partially on a non-indemnified claim , any payments and reasonable attorney fees incurred in connection with such claims are to be apportioned between the parties in accordance with the degree of cause attributable to each party.

(c)   Obligations related to Third Party Products are expressly excluded from Brooks' obligations to Customer under this Section 10.

11.   PRODUCT LIABILITY

OEM shall, at its own cost and expense, indemnify and hold harmless Brooks, its directors, officers, employees, and agents, from and against any and all losses, damages, liabilities, penalties, claims, demands, suits or actions, and related costs and expenses of any kind, including, without limitation, expenses of investigation and recall, counsel fees, judgments and settlements, for injury to or death of any person, property damage

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 such change or discontinuance. Brooks shall not incur any liability thereby or any obligation to provide such changes or improvements on Systems previously purchased or sold by OEM.

14. SOFTWARE LICENSES

The terms and conditions set forth in Exhibit A, attached hereto and made a part hereof, are applicable to the Software under this Agreement. The terms and conditions in Exhibit A are intended to supplement, and not replace, the terms and conditions in the rest of this Agreement. In the event of a conflict between the terms and conditions of Exhibit A and the other provisions of this Agreement, the terms and conditions of Exhibit A shall prevail.

15. COMPLIANCE WITH EXPORT LAWS

(a) OEM 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 Products except in compliance with such decrees, statutes, rules and regulations; (v) to obtain all governmental approvals and licenses necessary to import the Products into the Territory; (vi) not to sell, transfer or otherwise dispose of the Products 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 Article 15 by OEM or any Customers.

(b) OEM hereby expressly acknowledges that the technical data and the direct product thereof contained in the Products 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, OEM 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.

16. USE OF TRADEMARKS AND INTERNET

OEM shall not alter, remove from the Products, or interfere with the trademarks, trade names and service marks owned by Brooks (the "Marks"). OEM's use of the Marks hereunder shall be subject to such requirements as Brooks believes are appropriate to protect such Marks and Brooks' ownership rights therein, and Brooks shall have the right to monitor such use. OEM hereby does and shall at all times acknowledge Brooks' right, title and interest in and to the Marks and shall not in any manner represent that it has any ownership interest in the Marks. OEM will not adopt or use any trademarks, trade names or service marks confusingly similar to the Marks. OEM shall not at any time do or permit any act to be done which may in any way impair the rights of Brooks in the Marks. OEM shall not use any of the Marks on or in connection with any goods or services other than the Products. Upon termination of this Agreement, OEM will discontinue any and all uses of the Marks.

17. PROPRIETARY INFORMATION OF BROOKS

Unless otherwise agreed to in writing by Brooks, all designs, specifications, drawings, software, materials, special dies, molds, patterns, jigs, fixtures and any other property used by Brooks to furnish the Products to OEM shall be and remain the sole property of Brooks. Nothing in this Agreement conveys to OEM any rights to make or have made the Products supplied by Brooks. No rights or licenses with respect to the Products are granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in this Agreement.

18. INSURANCE

Brooks and OEM shall each maintain:

(i) Comprehensive general liability insurance covering bodily injury, property damage, contractual liability, products liability and completed operations, and

(ii) Worker's compensation and employer's liability insurance.

Upon request of the other party, each party shall furnish to the other certificates evidencing such insurance. Each party shall notify the other at least thirty (30) days prior to the cancellation or material change of any of the foregoing policies.

19. CONFIDENTIALITY

The Parties shall hold in confidence during the term of this Agreement, and thereafter, any and all information of a confidential nature regarding Brooks' or OEM's business or affairs, including without limitation, data provided or made available by Brooks or OEM, 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.

20.   **SURVIVAL CLAUSES**
      The following provisions will survive the expiration or termination of any Purchase Order contained in this Agreement: Article 1 (Definitions), Article 5 (Terms of Payment), Article 7 (Testing), Article 8 (Warranty and Services), Article 9 (Return Material Authorization Number), Article 10 (Infringement), Article 11 (Product Liability), Article 12 (Limitations on Liability), Article 14 (Software Licenses), Article 15 (Compliance with Export Laws), Article 17 (Proprietary Information of Brooks), Article 19 (Confidentiality), Article 20 (Survival Clauses), Article 21 (Governing Law), Article 22 (Arbitration), Article 23 (Force Majeure), Article 24 (Miscellaneous), and Exhibit A (Software Licensing Terms and Conditions).

21.   **GOVERNING LAW**
      This Agreement shall, in all respects, be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A, excluding: (i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980.

22.   **ARBITRATION**
      All disputes arising out of or relating to this Agreement shall be finally resolved by arbitration conducted in the English language in Boston Massachusetts, U.S.A. under the commercial arbitration rules of the United Nations Commission on International Trade Law. 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 Article to the contrary, Brooks shall have the right to institute judicial proceedings against OEM or anyone acting by, through or under OEM, in order to enforce Brooks' rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.

23.   **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; epidemic; 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 of the party affected.

24.   **MISCELLANEOUS**
    (a)   **Entire Agreement**
      This Agreement constitutes 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 this Agreement issued by OEM shall be deemed to be issued for its own internal purposes, and any provisions therein that are in addition to the terms of this Agreement shall be of no force and effect except and to the extent the information contained therein is, consistent with and required pursuant to this Agreement. The terms and conditions of this Agreement shall not be modified or amended except in a written agreement signed by both parties.

    (b)   **Assignment**
      This Agreement is not assignable or transferable by OEM 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 OEM.

    (c)   **Waiver**
      The failure of OEM or Brooks to enforce any of the terms or conditions of this Agreement shall not be deemed a waiver of any right to enforce any terms and conditions of this Agreement.

    (d)   **Separability**
      In case any one or more of the provisions, or portions of provisions, of this Agreement 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.

    (e)   **Relationship of Parties**
      The parties hereto agree that OEM shall operate as an independent contractor and not as an agent or employee of Brooks. OEM has no expressed or implied authorization to incur any obligation or in any manner otherwise make any commitments on behalf of Brooks. OEM shall employ its own personnel and shall be responsible for them and their acts and in no way shall Brooks be liable to OEM, its employees or third parties for any losses, injuries, damages or the like occasioned by OEM's activities in connection with this Agreement, except as expressly provided herein.

    (f)   **Government Approvals**
      It is the responsibility of OEM to obtain, at its own expense, any non-United States government consents, authorizations, approvals, filings, permits or licenses required for each of it or Brooks to exercise its rights and to discharge its obligations under this Agreement.

    (g)   **Notices**
      i) Any legal notices provided for under this Agreement shall be deemed effective when delivered in person or seven (7) days after deposit in the mails by registered or certified air mail (return receipt requested) postage prepaid and addressed to the respective address

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. <u>General</u>. 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. <u>License</u>. 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 or sublicense such Software, provided that a single copy may be made for archival and systems recovery purposes. OEM must reproduce and include the original copyright notice and other proprietary notices on any copy, in whole or in part, made of the Software programs and related documentation.

3. <u>Ownership</u>. The Software, in any form, and any copies thereof, and related documentation, and all copyright, trade secret, patent, trademark and other intellectual or industrial property rights therein, is and shall remain the sole property of Brooks. OEM's rights and licenses to use such Software is governed by this Agreement, including this Exhibit A.

4. <u>Warranties</u>. The Warranties described in Article 8(a)(i) of the Agreement shall only apply to the current release of the Software and shall not apply to any custom Software or customer specific changes to the Software. Software that contains bug fixes and error corrections, as determined in Seller's sole discretion, are included in warranty.

5. <u>Confidentiality</u>. The Software is valuable to Brooks and shall be treated as confidential information of Brooks, subject to the confidentiality provisions of Article 19 of the Agreement. The ideas and the expressions thereof contained in the Software are confidential and proprietary information and trade secrets of Brooks and/or its Licensors that are disclosed to OEM in confidence. OEM shall not cause or permit reverse engineering, disassembly or decompilation of the Software or disclosure, copying, display, loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise) or other dissemination of the Software, in whole or in part, to any third party without prior written consent of Brooks. OEM shall not modify, enhance or otherwise change or supplement the Software. OEM shall limit use of and access to the Software to such of OEM's employees as are directly involved in the utilization of the Software and who are bound in writing to preserve the confidentiality thereof. OEM shall take all reasonable steps to safeguard the Software and to ensure that no unauthorized persons have access to the Software, and to ensure that no persons authorized to have such access shall take any action which would be in violation of this Agreement if taken by OEM. OEM shall promptly report to Brooks any actual or suspected violation of this Paragraph and shall take further steps as may reasonably be requested by Brooks to prevent or remedy any such violation.

6. <u>Modifications by Brooks</u>. It is understood and agreed by OEM that the Software, and any Enhancements thereto, including without limitation, unless otherwise expressly agreed to in writing between Brooks and OEM, those resulting from any tasks, work, assignments or services supplied by Brooks to OEM or its suppliers or Customers (including training), shall be and remain the sole and exclusive property of Brooks and/or its Licensors, subject to the use thereof by OEM only under the terms of this Agreement.

7. <u>Termination</u>. The licenses granted under this Agreement shall remain in effect until (i) Brooks terminates the licenses by reason of OEM's breach of any of the terms or conditions of this Agreement and then its failure to cure such breach in accordance with the provisions of this Agreement, or (ii) OEM terminates the licenses in writing. Upon termination of this Agreement, OEM shall forthwith pay all sums invoiced to OEM by Brooks and return or destroy all copies of the Software at Brooks' instruction and shall certify in writing by an officer of OEM that all copies and systems recovery copies thereof have been destroyed and/or deleted from OEM's computer libraries or storage facilities and are no longer in use.

8. <u>Sub-licensing Software</u>.

A. OEM will be permitted to sublicense to Customers the Software solely for the operation of the Products sold by OEM to Customers hereunder, provided that the sublicense is effected by an agreement signed before the Software is provided and only if the sublicense includes the same definitions of terms as used herein, and under which each Customer expressly agrees with OEM:

1) that each copy of the Software, including any subsequent updates, is licensed to Customer on a non-exclusive basis for use only as part of the Products, on each unit of Equipment on which the Software is first installed, or on another unit of Equipment only on a temporary basis during a malfunction of the original Equipment which causes the Software to be inoperable,
2) that no copy of the Software may be reproduced by Customer in any form, in whole or in part,
3) that no title to or ownership of the Software or copyright therein is transferred to Customer, or to any other person,
4) that OEM may terminate the Software license and require return of the Software if Customer fails to comply with any of the license terms and conditions,
5) not to provide or otherwise make available the Software to any other party (except Customer's employees directly concerned with the Customer's licensed use of the Software),
6) that Brooks shall have the right to enforce these provisions against the Customer (including the right to terminate the sublicense) directly if Customer is in breach of the sublicense provisions,
7) that Customer shall not create or attempt to derive, by reverse engineering, de-compilation or otherwise, the Software source programs or any part thereof from the Software object programs or from other information made available under this Agreement,
8) that Brooks or its Licensors shall have no obligation or liability for incidental, special, indirect or consequential damages arising out of or in connection with this agreement, including without limitation Customer's loss of use, data, anticipated revenues or profit, failure to realize expected savings, or other commercial or economic loss, regardless of the cause (including negligence) even if Brooks has been advised of the possibility of such loss,
9) that Brooks' liability, and that of its licensors, arising out of the manufacture, sale or supplying of a product or its use or disposition, whether based upon warranty, contract, tort or otherwise, shall not exceed the actual purchase price paid by OEM for such product, and
10) that 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 systems connected to the Systems. Customer shall be responsible for providing hardware interlocks which prevent unsafe control actions by the Products.

B. Termination of any License granted to OEM shall not affect valid sublicenses granted by OEM under this Sublicense provision in good faith for consideration prior to receiving notice of termination. OEM shall not be liable to Brooks for any breach by a Customer of the terms of any sublicense unless OEM has willfully or negligently contributed to or cooperated in the breach. OEM agrees to cooperate with Brooks in any proceedings against any Customer alleging breach of the sublicense terms.

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.