

PRODUCT EVALUATION AGREEMENT

The following terms and conditions ("Agreement") apply to any products that are provided to Customer for product evaluation, as included on a quotation. Any additional or differing terms and conditions on Customer's Purchase Order do not apply unless expressly agreed to in a writing signed by the Brooks Automation US, LLC, or other affiliate or subsidiary listed on the quotation (collectively, "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 Customer hereby agree to exclude application of the Uniform Commercial Code.

RECITALS

Brooks wishes to allow Customer to evaluate certain Brooks products listed on the quotation, and the related documentation (collectively, "Products").

Customer wishes to evaluate the Products under the terms of this Product Evaluation Agreement ("Agreement") in order to determine whether Customer will purchase the Products.

In consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

AGREEMENT

1. EVALUATION RIGHT

Brooks hereby grants to Customer a non-exclusive right (the "Right") to evaluate and use the Products for the time period specified in the quotation (the "Evaluation Period") in accordance with the terms and conditions of this Agreement.

The Right and the Products may not be assigned, sublicensed or otherwise transferred to another location, person or legal entity except with the prior written consent of Brooks, which may be withheld in its absolute discretion. The Products may be used for evaluation purposes only.

2. TERM

The Right will commence on the delivery date of the Products and will continue until the end of the Evaluation Period, at which time the Right will terminate, and Customer will either return the Products to Brooks or purchase the Products at the price quoted by Brooks, and Customer will remain bound by the terms of this Evaluation Agreement.

3. UPON EXPIRATION OR TERMINATION

Upon expiration or earlier termination of the Evaluation Period, Customer shall promptly return the Products to Brooks in their original condition, reasonable wear and tear excepted, unless purchased by the Customer. The provisions set forth in Sections 2-10 of this Agreement will survive any expiration or termination of the Right. The Evaluation Period may be terminated prior to its expiration by either party giving written notice to the other party. The termination may be with or without cause and will become effective upon receipt of the notice.

4. OWNERSHIP, INTELLECTUAL PROPERTY RIGHTS AND NON-DISCLOSURE

Brooks will at all times be considered the owner of the Products, and of all copyright, trade secret, patent, trademark and other intellectual or industrial property rights therein. No rights or

licenses with respect to the Products are granted or deemed granted under or in connection with this Agreement unless expressly stated otherwise in this Agreement.

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

5. WARRANTY AND SERVICES

- A. During the Evaluation Period, Brooks warrants the Products to be free from defects caused by faulty materials or poor workmanship and to conform to specifications furnished or approved by Brooks. If any non-conformities are found in the Products by Customer, and reported to Brooks in writing, during the Evaluation Period, Brooks shall provide Customer with the services described in paragraph C below, at no charge ("Warranty Services"). The Warranty Services of this paragraph A shall only be provided during Brooks' local normal business hours and at a Brooks facility selected by Brooks. Should Brooks deem it necessary, Brooks will provide the Warranty Services at Customer's site.
- B. THE FOREGOING WARRANTY IN PARAGRAPH A. ABOVE IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- C. The warranty under paragraph A. 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 Customer, changes in Customer'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.
- D. Warranty Services may be performed by Brooks' subsidiaries, branches or distributors ("Agent"). Brooks shall require the Agent to keep the parts of the Products which are appropriate for the performance of Warranty Services by the Agent.

6. LIMITATIONS ON LIABILITY

All use of the Products is at the exclusive and sole risk of Customer. Customer is solely responsible for proper use of the Products, measures to prevent loss of data, and all matters relating to the use of the Products.

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 THE WARRANTY SERVICES PROVISION)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE QUOTED TO THE CUSTOMER 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.

CUSTOMER SHALL NOT BRING ANY SUIT OR ACTION AGAINST BROOKS OR ANY OF ITS DISTRIBUTORS OR SUPPLIERS FOR ANY REASON WHATSOEVER MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAD ACCRUED.

Because of the hazardous nature of vacuum processing and Brooks' inability to control the scope or manner of data entry into the Products, neither Brooks nor its Licensors shall be held liable for any damages, costs, loss, or personal injury arising from the implosion, explosion, burning, damage or other failure of any non-Brooks Products connected to the Systems. Customer shall be responsible for providing hardware interlocks which prevent unsafe control actions by the Systems.

7. ENFORCEMENT

Because Customer's breach of any of its obligations hereunder will irreparably harm Brooks and its suppliers and substantially diminish the value of Brooks' proprietary rights in the Products, Customer agrees that if it breaches any of its obligations hereunder, Brooks shall, without limiting its other rights or remedies, be entitled to equitable relief (including, but not limited to, injunctive relief) to enforce Customer's obligations hereunder and to protect Brooks' proprietary rights.

8. EXPORT CONTROL

Customer hereby agrees not to sell, transfer or otherwise dispose of the Products in violation of the export laws of the United States. Customer 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, 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.

9. ADDITIONAL RESPONSIBILITIES

- A. Brooks shall deliver the Products to the Customer location, as listed on the quotation ("Location"). Installation of the Products at the Location shall be the responsibility of the Customer unless otherwise agreed between Brooks and the Customer. Customer shall insure the Products while the Products are at Customer's site.
- B. Customer shall be responsible for providing and preparing the site for installation and to provide all necessary utilities.
- C. Customer will use and evaluate the Products and provide reasonable feedback to Brooks on the performance and reliability of the Products by means of an evaluation report in a form mutually agreed to by the parties.

10. GENERAL

- A. This Agreement shall be governed in accordance with the laws of the jurisdiction in which the applicable Brooks entity is incorporated; 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.
- B. The execution, delivery and performance of this Agreement has been duly authorized by Customer, and the person signing on Customer's behalf has the power and authority to do so.
- C. Any notice, request, or report required or permitted under this Agreement must be in writing and will be effective upon receipt if delivered by recognized overnight courier, certified or registered mail, or electronic mail confirmed by mail, to the address for each party specified in the quotation or to any other address designated by written notice in accordance with this Section. Any notice, request, or report not given in accordance with this Section will not be effective until actually received by the other party.
- D. Brooks shall not be liable for any delay or failure to perform its obligations hereunder if such delay or failure to perform is due to any cause or condition reasonably beyond Brooks' control.
- E. Brooks may assign or transfer this Agreement without Customer's consent.
- F. It is intended that this Agreement shall not violate any applicable law. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected thereby, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted herein.
- G. This Agreement contains the entire understanding of the parties with respect to the matters contained herein. No waiver, consent, modification, amendment or change of

the terms of this Agreement shall be binding unless in writing and signed by Brooks and Customer.

- H. The failure by a party to exercise or enforce any of the terms and conditions of this Agreement shall not constitute or be deemed a waiver of that party's rights thereafter to enforce each and every term and condition of this Agreement.
- I. All disputes arising out of or relating to this Agreement shall be finally resolved by arbitration conducted in the English language in the jurisdiction in which the applicable Brooks entity is incorporated 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 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.
- K. Headings in this Agreement are for reference purposes only, and shall not be used to interpret or construe this Agreement.