

## TERMS AND CONDITIONS OF PURCHASE (“TERMS AND CONDITIONS”)

BY BROOKS AUTOMATION (GERMANY) GMBH (“BROOKS”)

### **1) Scope / Formation of Contract**

These Terms and Conditions shall exclusively govern all business relations with any supplier of goods (hereinafter “Seller”) irrespective of the fact that the Seller manufactures or sells the goods. These Terms and Conditions shall also apply if Brooks accepts delivery of goods under the existence of the Seller's contradictory terms.

Brooks objects to any terms proposed by Sellers that add to, vary from, or conflict with the terms herein. Any such proposed terms shall be inapplicable and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between Brooks and the Seller, which may hereafter be modified only by written instrument executed by the authorized representatives of both parties.

These Terms and Conditions shall also govern any future individual contract between Brooks and the Seller to the exclusion of any other terms and conditions.

Any purchase order by Brooks (hereinafter “Purchase Order”) may be accepted in writing by Seller or by Seller’s assent or conduct. If for any reason Seller does not accept in writing, any conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of the Purchase Order and these Terms and Conditions.

### **2) Delivery / Passing of Risk**

The terms of delivery are as stated on the Purchase Order. In the absence of any other agreement, deliveries shall be made DDP (Delivery Duty Paid, Incoterms 2010) to the agreed upon place of delivery. The obligations of Seller to meet the delivery dates, specifications, and quantities set forth therein are of the essence for such Purchase Order. Deliveries are to be made both in quantities and at times specified therein and, in the absence of such specifications, such quantities and times as are specified pursuant to Brooks’ written instructions. Shipments in greater or lesser quantity than ordered may be returned at Seller’s expense unless written authorization is issued by Brooks. If Seller’s deliveries fail to meet schedule, Brooks, without limiting its other rights and remedies, may either direct expedited routing or charge excess costs incurred thereby to Seller or cancel all or part of this order in accordance with the Cancellation or Termination provision hereof. Goods that are delivered in advance of schedule are delivered at the risk of Seller and may, at Brooks’ option, be returned at Seller’s expense for proper delivery and/or have payment therefore withheld by Brooks until the date that the goods are actually scheduled for delivery.

The transfer of risk shall take place at the place of delivery specified by Brooks.

### **3) Packing and Shipping Instructions**

Seller agrees to insure that shipments are properly packed and described in accordance with Brooks' specifications and / or applicable carrier regulations. Shipments will be made using the carrier selected by Brooks. Brooks may assist Seller by providing freight classifications or classifying material. Seller shall notify Brooks' appropriate traffic department 72 hours prior to shipment for special shipping instructions. Each box, crate or carton to be shipped will show Brooks' full street address and Purchase Order number regardless of how shipped. Seller will provide a packing list to accompany each shipment, referencing the appropriate Purchase Order number. A bill of lading also will reference the Purchase Order number.

### **4) Inspection**

Payment for goods delivered hereunder shall not constitute acceptance thereof. Brooks shall have the right to inspect such goods and to reject any or all of said goods if, in Brooks' judgment, they are defective. At Brooks' option, inspection may be performed on a statistical sampling basis. If defects are revealed in such sampling, Brooks may elect, in its discretion and without limiting any other rights and remedies, either to reject the entire shipment on the basis of such sampling or to inspect the entire shipment. Goods rejected as defective may be returned to the Seller for full credit or replacement, at Brooks' option, and, in addition to Brooks' other rights, Brooks may charge the Seller all expenses of unpacking, examining, repacking, and reshipping such goods. Replacement goods shall be sent freight prepaid at Seller's expense, and Seller shall use expedited delivery if required by Brooks. In the event that Brooks receives goods whose defects or nonconformities are not apparent on initial examination, Brooks may subsequently reject such goods within a reasonable period of time after such defects or nonconformities become apparent. The facilities at which goods subject to the Purchase Order are manufactured shall be subject to inspection and approval by Brooks from time to time. Seller shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. If any goods subject to the Purchase Order or any components thereof, are to be manufactured by subcontractor(s), Seller shall require such subcontractors to comply with this provision.

### **5) Price / Payment**

The price shown on the Purchase Order is the total amount Brooks will pay for the goods. Seller shall not add additional amounts for taxes, packing, shipping, insurance or anything else unless specifically agreed to by Brooks. If possible and permitted, Brooks will undertake the disposal of waste packing materials and charge these costs to the Seller. The Seller shall otherwise regularly collect packing materials from Brooks at its own costs.

If there is no price stated in the Purchase Order, the price shall be deemed to be the price last quoted to Brooks or the prevailing market price, whichever is lower. Seller warrants that the price for goods sold to Brooks under the Purchase Order is not greater than the price for comparable goods sold in comparable quantities to any other purchaser.

The period within which invoices must be paid commences with Brooks' unconditional acceptance of delivered goods or services and upon receipt of a properly issued invoice. Unless agreed otherwise, payments are to be made within 10 days less a discount of 2% or within 45 days net, at Brook's choice.

## **6) Change Orders**

From time to time, Brooks may change any of the drawings, specifications, or instructions for work covered by the Purchase Order, or the methods of shipment or packing or the schedule or place for delivery of goods covered by the Purchase Order, and Seller agrees to comply with such changes. Brooks shall give Seller notice of such changes in writing signed by a duly authorized representative of Brooks. If a change results in a decrease or increase in the Seller's cost or in the time for performance, an appropriate adjustment to the price or the time for performance will be made by the parties in writing. Unless Seller provides Brooks with an itemized statement of adjustment to the cost and/or time for performance within 30 days after Seller's receipt of Brooks' change notice, Seller shall be conclusively deemed to have waived all claims against Brooks with respect thereto.

## **7) Cancellation or Termination**

Without limiting any other rights and remedies, Brooks reserves the right to cancel or suspend all or, from time to time, any undelivered or unexecuted portion of this a Purchase Order

(a) for cause, if Seller fails to make any delivery or to perform any work as scheduled or breaches any of the other terms of the Purchase Order and

(b) without cause upon written notice to Seller.

Upon cancellation or suspension without cause, Brooks shall reimburse Seller for expenses (which shall not include lost profits) related to the affected portion(s) of the order, provided that such amount shall not exceed the less of

(i) a pro rata portion of the contract price or

(ii) the cost of finished goods to be delivered within 30 days after such cancellation or suspension, 30 days of work in progress, and 30 days of raw materials that Seller demonstrates cannot be diverted to other uses.

The foregoing states Brooks' entire liability and Seller's exclusive remedy for any cancellation or suspension of all or any part of this order. Any claim by Seller under this paragraph must be asserted in writing within 30 days after Brooks' notice of cancellation or suspension and the amount of such claim must be stated in detail within 30 days thereafter.

## **8) Warranties**

Seller warrants that all goods and services provided under the Purchase Order:

- (a) shall be of good quality and workmanship and free from patent and latent defects;
- (b) shall conform to all specifications, drawings, and descriptions furnished, specified, or adopted by Brooks;
- (c) shall be merchantable and suitable and sufficient for their intended purpose;
- (d) do not infringe the patent, copyright, or other intellectual property rights of any third party (except to the extent that such infringement arises solely as the result of a design furnished by Brooks, provided that there was no non-infringing way for Seller to implement such design);
- (e) shall comply with the restrictions of the use of certain hazardous substances in electrical and electronic equipment and other obligations as set forth in the German Act on the Sale, Taking Back and Environmentally Sound Disposal of Electrical and Electronic Devices (*Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten*), and
- (f) shall be free of any claim of any third party.

Warranty claims shall become time-barred two years after delivery, unless statutory law provides for a longer limitation period. In case of any defects as described in subsections (a) through (e) above, Brooks may, at its choice, demand that defects are remedied or goods free of defects are supplied. Without prejudice to Section 275 of the German Civil Code (BGB), the Seller may not refuse to provide the kind of cure chosen by Brooks.

None of the remedies available to Brooks for a breach of any warranty may be limited except to the extent and in the manner agreed to by Brooks in a separate agreement specifically designating such limitation and signed by an authorized representative of Brooks. Brooks' inspection and / or acceptance of and / or payment for any goods or services shall not constitute a waiver by it of any warranties. Brooks' approval of any sample or acceptance of any goods shall not relieve Seller from responsibility to deliver goods and perform services conforming to specifications, drawings and descriptions.

## **9) Indemnification and Insurance**

Without limiting any other rights and remedies of Brooks, Seller shall defend and indemnify Brooks against all damages, liability, claims, losses and expenses (including attorneys' fees) arising out of or resulting in any way from any actual or alleged

- (a) defect in the goods or services purchased hereunder;
- (b) infringement of any patent, trademark, or copyright of any third party by any

goods purchased hereunder; or

(c) act or omission of Seller, its agents, employees, or subcontractors.

Seller shall maintain a reasonable public liability insurance as will adequately protect Brooks against such damages, liabilities, claims, losses, and expenses as may be reasonably expected in connection with the supplies made by the Seller to Brooks. Seller agrees to submit certificates of insurance, evidencing coverage in accordance with this paragraph, when requested by Brooks. Seller's obligations under this paragraph shall survive the cancellation, termination, or completion of the Purchase Order.

#### **10) Ethics policy**

Seller must comply with Brooks' corporate ethics policy, a copy of which is available upon request. The Seller warrants and undertakes to Brooks that in the performance of any contract of sale the Seller will comply with all laws, rules, regulations, decrees and other ordinances issued by any governmental, state or other authority relating to the subject matter of these Terms and Conditions and to the performance by the parties hereto of their obligations hereunder.

#### **11) Confidential Information**

The contents of the Purchase Order and all commercial and technical information provided to Seller by Brooks shall not be divulged to any third party by Seller or used by Seller other than in connection with the Purchase Order. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Seller to Brooks shall be deemed secret or confidential and Seller shall have no rights against Brooks with respect thereto. The obligations under this paragraph shall survive the cancellation, termination, or completion of the Purchase Order.

#### **12) Independent Contractor**

When work of any description is performed in furtherance of Seller's obligations under the Purchase Order on the premises of Brooks or any of Brooks' customers, Seller agrees that such services are to be rendered by Seller as an independent contractor and Seller shall provide all safeguards and take all necessary precautions to prevent the occurrence of any accident, injury, death or loss to any person or property and shall be solely responsible therefore.

#### **13) Force Majeure**

Brooks may delay delivery and / or acceptance under the Purchase Order if such delivery and / or acceptance is made impossible or impractical by causes beyond Brooks' control.

#### **14) Brooks' Property**

All special tools, dies, patterns, jigs, fixtures, and other items supplied or paid for by Brooks remain Brooks' property and Seller agrees to comply promptly with all disposal and shipping instructions furnished by Brooks. Seller agrees, at its expense, to maintain all of Brooks' property in Seller's possession in good condition and repair and adequately insured and to indemnify Brooks for any damage or loss to such property.

### **15) Remedies**

Brooks' remedies are cumulative. Remedies specified in the Purchase Order or these Terms and Conditions do not exclude any remedies available at law. Waiver of any breach on any one occasion shall not constitute a waiver of the same or any other breach on any other occasion. Acceptance of any items or payment therefore shall not waive any breach.

### **16) Assignment and Subcontracting**

Seller may not assign or transfer the Purchase Order or any payments to be made hereunder without Brooks' prior written approval. Seller may not subcontract any substantial portion of the work to be performed by it under the Purchase Order, or the manufacture of any critical component of the goods to be delivered under the Purchase Order, without Brooks' prior written approval.

### **17) Setoff**

All claims for monies due or to become due from Brooks under the Purchase Order are subject to deduction by Brooks for any setoff or counterclaim that Brooks may have against Seller.

The Seller does not have the right to offset a claim against a counterclaim unless the counterclaim is undisputed or has been recognized by declaratory judgment.

### **18) Applicable Law / Place of Jurisdiction**

These Terms and Conditions and any Purchase Order shall be interpreted in accordance with the laws of the Federal Republic of Germany excluding the application of UN Convention on the International Sale of Goods (CISG). The courts of Gera, Germany, shall be exclusively competent for any dispute arising out of or in connection with any Purchase Order and these Terms and Conditions.