

## **Brooks Automation (Germany) GmbH General Terms and Conditions of Sale**

### **Terms**

1. These Brooks Automation (Germany) GmbH (hereinafter "**Brooks**") General Terms and Conditions of Sale (hereinafter "**Terms**") govern all sales by Brooks to any customer (hereinafter "**Customer**") of products manufactured and / or offered for sale by Brooks (collectively hereinafter "**Products**") and / or related knowledge-based services, including maintenance, repair, exchange, and remote data analysis services, and proactive service programs (hereinafter "**Services**", collectively hereinafter "**Sales and Services**").
2. The Terms may not be waived or modified except by explicit and specific reference in a writing signed by an authorized Brooks representative. Brooks expressly rejects and objects to all new, different or additional terms Customer may submit.
3. If any provision of the Terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

### **Orders**

4. All orders are subject to acceptance by Brooks. Brooks reserves the right to refuse any order at any time prior to the acceptance by Brooks. Acceptance operates to supersede any prior agreements, proposals, quotations or understandings related thereto.

### **Prices and Fees**

5. The Product prices and Service fees quoted shall solely apply. Additional services will be invoiced separately.
6. All Product prices and Service fees are quoted as net prices. In addition to Product prices and Service fees, Customer must pay all charges for freight, insurance, packaging, taxes, duties, customs fees and other charges, including, but not limited to, sales, use, excise, privilege, value-added and similar taxes or charges imposed by any government authority; international shipping charges; forwarding agent's and broker's fees; consular fees; document fees; and import duties.

### **Payment Terms**

7. Brooks will invoice Customer for Products upon shipment, and will invoice recurring Service fees in advance on or about the first day of each calendar month. Monthly invoices will also include any one-time Service fees incurred in the preceding month. Exchange fees are billed separately. If deliveries of Products are made in installments or Services are only provided partially, each installment or partial provisions may be separately invoiced and shall be paid for when due.
8. Subject to more restrictive credit terms, invoices are payable in full within 30 days of the invoice date. Except for any applicable prompt payment discount, Customer must pay the entire amount of each Brooks invoice without offset or deduction.
9. Payment shall be considered to have been made on the day the payable sum is received.
10. Any deliveries of Products and the provision of Services shall at all times be subject to credit approval of Brooks. If, in Brooks' judgment, the Customer's financial

condition at any time does not justify the delivery of Products or provision of Services on the payment terms above, Brooks may require full or reasonably partial payment in advance or other payment terms as a condition to delivery or rendering of Services.

11. If the customer delays payment beyond the agreed due date, Brooks is entitled to demand default interest of 9 percentage points above the base interest rate (*Basiszins*) p.a.. Brooks shall remain entitled to claim higher and/or other actual damages.

### **Retention of Title**

12. Brooks retains title to all Products until all receivables, on whatever legal grounds, have been paid by Customer in full (hereinafter “**Products sold subject to retention of title**”). In case of processing, combining or mixing of Products sold subject to retention of title with any goods of the Customer, Brooks shall be the co-owner of such goods to the extent that the invoiced value of the Products sold subject to retention of title relates to the value of the other goods involved. Where Brooks’ co-ownership becomes null and void due to processing, combining or mixing with any other goods, the Customer shall immediately assign to Brooks its ownership rights which correspond to the value of the Products sold subject to retention of title. The Customer shall also be responsible for holding such rights in safe custody on behalf of Brooks and at its own expense.

### **Cancellation and Termination**

13. Customer may cancel any order for Products subject to payment to Brooks of Brooks’ damages incurred. Customer may terminate Service prior to the expiration of the applicable Service period, subject to payment of the aggregate monthly Service fees for the unexpired portion of the Service period.

14. No termination for default shall be effective unless and until Brooks shall have failed to correct such alleged default within a reasonable deadline to be set at least twice after receipt of a written notice specifying such defaults.

### **Delivery / Passing of Risk / Interest**

15. The Products sold under these Terms are shipped EXW Brooks’ premises, if ship-to destination is in the Federal Republic of Germany. Delivery occurs at Brooks’ premises and Customer bears all costs, risks and responsibilities involved in taking the Product from Brooks’ premises, loading Product, and clearing it for export if necessary. If ship-to destination is outside the Federal Republic of Germany, Products are shipped FCA (Incoterms 2010). If a shipment is delayed for reasons attributable to the Customer, the risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of Brooks’ readiness to ship.

16. Customer acknowledges that delivery dates provided by Brooks are estimates only, and that Brooks is not liable for failure to deliver on such dates. Brooks reserves the right to deliver in installments or perform in parts.

17. Delivery of a quantity by Brooks in installments that varies from the quantity specified will not relieve Customer of the obligation to accept delivery and pay for the Products delivered.

### **Governmental Authorization**

18. The Products governed by these Terms may be subject to export control regulations, and transfers of the Products must be done in accordance with all applicable export control laws. Such regulations may include restrictions imposed by the European Union, United States and other governing bodies. It is the responsibility

of the Customer to comply with all relevant export control laws. Diversion contrary to these laws is prohibited. In no event may the Products governed by these Terms be exported to North Korea or Iran, regardless of the applicable local law.

Sales and Services under the Terms may be subject to public control and authorization. Customer will be responsible, at its own risk and expense, for obtaining any required authorization, such as an import license, foreign exchange permit or any other official governmental authorization, even though Brooks may apply for such authorization at Customer's request. Customer is responsible for direct and timely customs clearance at the place of destination. Brooks will not be liable for any authorization that is delayed, denied, revoked, restricted or not renewed, and Customer will not be relieved of its obligation to pay Brooks pursuant to the applicable order. If any official authorization is required, Customer shall inform Brooks immediately thereof and Customer shall provide Brooks with such authorization as soon as it is granted or available.

### **Limitation of Warranty / Examination of Products**

19. Products are commercial grade, and are not intended for use in connection with consumer use, or with any nuclear facility or activity where failure of a single component could cause substantial harm to persons and / or property, including, without limitation, use in aircraft, missiles, or space exploration. Brooks' Products are intended for professional commercial applications only.

20. Remanufactured Products, exchange, repair and "Valueline" Products are remanufactured used equipment and tested to Brooks' product specifications for operational performance.

21. Brooks warrants that from the date of delivery to Customer, Products will be free from defects to title, in material and workmanship for the duration of the applicable warranty limitation period specified in Section 26 below.

22. Brooks warrants that the Services will be performed by giving attention to the technical standards and developments in effect at the time when such Services are performed and in accordance with the then-current state of the art in technology.

23. Brooks warrants that software manufactured by Brooks will execute according to programming instructions, but does not warrant error-free or uninterrupted operation of such software or associated Products.

24. Brooks makes no other representations or warranties, express or implied, with respect to Products or Services, unless expressly identified as a warranty.

25. Customer must examine all Products and notify Brooks within 15 days after delivery of any discovered defect. If the defects are hidden, Customer must notify Brooks within 15 days after discovery of such defects.

26. If a Product is defective and / or not substantially conforming with its specifications, Brooks shall have the duty, but also the right to – at Brooks' option – replace or repair the Product free of charge within a reasonable period of time. The Customer shall be entitled to rescind the contract or reduce the contract price in accordance with its statutory rights, however, the Customer shall not be entitled to rescind the contract or to reduce the contract price, unless the Customer has set a reasonable deadline to Brooks twice to remedy the defects at issue, unless setting of

such a deadline is exceptionally dispensable. In case Brooks, during the warranty period specified below, does not perform Services as contractually agreed, Brooks shall, without additional charge, cure any such non-performance or bad performance.

All warranty claims shall be time-barred 12 months after delivery of the respective Product or rendering of the Service(s) at issue, unless mandatory law prescribes a longer limitation period.

If any non-conformities are found in the Brooks Products by Customer, and reported to Brooks in writing in due time, Brooks shall provide Customer with the services described in paragraph below, at no charge (“**Warranty Services**”). The Warranty Services of this paragraph 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. On-site support response will be provided on reasonable basis, when on-site support is deemed necessary by Brooks.

Replacement part will be new or like-new equivalent parts, and all replaced parts will become the property of Brooks or its representative on an exchange basis. The warranty under paragraph above shall not apply to any Brooks 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) any reason not attributable to Brooks. Corrective services of any nature required from Brooks, or its representatives, for the Brooks 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 Product 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. For sake of clarity, any mandatory warranty terms under applicable law shall remain unaffected from these Warranty Services’ terms.

Warranty Services may be performed by Brooks’ affiliates and subsidiaries, branches or distributors (“**Agent**”). Brooks shall require Agent to keep the parts of the Brooks Products which are appropriate for the performance of Warranty Services by the Agent.

### **Repairs and Exchanges after Warranty Period**

27. Subject to payment of respective fees, Customer may order repair or exchange Product after the applicable warranty period has expired. Brooks will invoice Customer for the repair or exchange Product upon shipment. For exchange Products: Customer agrees to return the non-conforming Product to Brooks within 14 days of shipment from Brooks of the exchange Product. Brooks may separately invoice Customer for any non-conforming product not returned to Brooks a Euro € 7,500.00 exchange fee (plus taxes, if any) for pumps and compressors and wafer handlings robots, and a Euro € 4,000 fee (plus taxes, if any) for refrigerators, controllers and armsets, unless Customer returns the nonconforming Product to Brooks within the

applicable 14 day exchange return period.

### **Product Returns**

28. In order to return a Product for repair, exchange or otherwise, Customer must obtain a Return Material Authorization ("**RMA**") number from Brooks and comply with Brooks' shipping instructions. Products must be shipped in original 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. Customer will prepare and pack the returned Products in such way that they are not declared as hazardous materials.

29. Customer shall provide a completed copy of a Hazardous Material Declaration, signed by an authorized person, to Brooks to obtain a RMA number. Customer acknowledges that Brooks will not accept any Product exposed to biological hazards, radioactive material, organic metal or mercury ("**Unacceptable Hazards**"). Customer shall indemnify, defend and hold Brooks harmless against, expenses and claims for personal injury, property damage and disposal and clean-up costs arising from returned High Vacuum Products containing Unacceptable Hazards or undeclared contaminants.

30. Brooks will return to Customer, freight collect: a) Products shipped without an RMA number; b) Products shipped to a Brooks location, or via a shipment method, other than as specified by Brooks; c) Products shipped without a complete Health and Safety Certificate, or exposed to Unacceptable Hazards.

31. Products returned for repairs and exchanges after the warranty period has expired must be shipped freight prepaid by Customer.

### **Limitation of Liability**

32. In case of a breach of contractual obligations, defective deliveries or tortuous acts, Brooks shall only be obliged to compensate damages or expenses – subject to any other contractual liability– if Brooks acted intentionally or grossly negligently or, in cases of Brooks' slight negligence, if such slight negligence results in the breach of an essential contractual duty. However, in case of such slight negligence, Brooks' liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the respective contract.

33. This limitation of liability shall not apply in cases of a quality warranty or in cases where Brooks has maliciously failed to disclose a defect, both in accordance with Section 444 of the German Civil Code, in case of damages resulting from death or bodily injury or where the laws on product liability impose overriding liabilities which cannot be excluded.

34. Brooks shall not be liable for any losses or alteration of data which could have been avoided by the Customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

### **Intellectual Property**

35. Transfer of title shall not operate to convey to Customer any right to make, or have made, any Product supplied by Brooks.

36. Customer is granted no right or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by any license agreement accompanying such software or other intellectual property.

### **Force Majeure**

37. Brooks will not be liable for failure to fulfill its obligations, or for delays in delivery, due to causes beyond its reasonable business control, including, but not limited to, natural disasters, epidemics or pandemics, acts or omissions of suppliers, other parties, or civil or military authorities; interruptions in communications or delays in transportation; and war or acts of terrorism. Brooks' time for performance will be extended for the period of such delay, or Brooks may, at its option, cancel any order or remaining part thereof without liability.

### **Disputes**

38. The Customer and Brooks agree and submit themselves as follows: All Sales and Services will be governed by, and any disputes arising thereunder will be resolved in accordance with the laws of the Federal Republic of Germany with the exemption of the international conflict of law provisions. The UN-Convention on the International Sale of Goods (CISG) shall not apply.

39. All disputes arising out of or in connection with the sales shall first be attempted to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the Regional Court of Constance (*Landgericht Konstanz*), Germany, provided that Brooks shall always be permitted to bring any action or proceeding against Customer in any other court of competent jurisdiction.

### **Miscellaneous**

40. Customer may only withhold or offset any of Brooks' claims against its own counter-claims if, and to the extent, these counter-claims are uncontested or have been found to be legally binding.

41. The German version of these Terms shall be binding. In case of any doubt, the German version shall prevail any other version in any other language.

August 2022