

# Service Terms and Conditions

## 1. Definitions.

In these Service Terms and Conditions ("Agreement"),

- (a) "Customer" shall mean the entity who placed the original Purchase Order for the purchase of Products from Brooks, referred to commonly as Original Equipment Manufacturer ("OEM"), or End User ("EU").
- (b) "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.
- (c) "Lead Time" shall mean the period from Brooks sales order acknowledgement to provide a replacement part or Product to the part or Product shipment date.
- (d) "Products" shall mean all products manufactured or distributed by Brooks, including Equipment, Software and any related documentation and services.
- (e) "Enhancement" shall mean modifications, refinements, and improvements that Brooks makes to the Product and which Brooks elects to incorporate into and make a part of the Product and does not separately market. Brooks reserves the right to determine which modifications, refinements and improvements will constitute Enhancements.
- (f) "Purchase Order" shall mean a firm written purchase order placed by Customer for the purchase of Products.
- (g) "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.
- (h) "Third Party" herein also called the "Licensor, shall mean a party other than Brooks."
- (i) "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.
- (j) "Enhanced Warranty" shall mean a purchase agreement to include additional entitlements, as defined in that purchase agreement, during the Warranty period, such as expanded coverage hours.
- (k) "Service Agreement" shall mean a purchase agreement provided post Warranty to include active entitlements as defined in that purchase agreement, such as labor hours, parts coverages and discounts, and technical support.
- (l) "Product Non-Conformance" shall mean Product attribute or function that does not meet Product performance as defined in the most current Customer signed selection guide. For Products without selection guides, a Product non-conformance is defined as a Product attribute or function that fails to meet the stated specifications of Brooks Products and any terms outlined on the Brooks quotation for the Product and/or any current written agreement between Brooks and the Customer.

## 2. Service Program.

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

## 3. Service Fees.

- 3.1 Customer agrees to pay Brooks for the Services in accordance with price schedules set forth in a written quotation provided to Customer by Brooks.
- 3.2 Customer must pay any applicable export, import, and insurance charges on items shipped to Customer as part of the Service; and sales, use, excise, privilege, value-added and other taxes or charges imposed by any government authority (collectively, "Other Charges"). If Customer provides Brooks with a permit indicating that Customer is permitted to pay sales and use tax directly to the taxing authority or is exempt from sales and use tax, Brooks shall not invoice Customer for or collect from Customer any sales and use taxes.
- 3.3 At the end of any Service period on the Brooks quotation, subject to Customer's payment of the applicable Service fees, Brooks will continue to provide Services to Customer on a month-to-month basis until either party terminates these Service Terms and Conditions upon at least ten days' written notice to the other party, effective at the end of the calendar month.

## 4. Invoicing and Payment.

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

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

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

#### **5. Product Returns.**

5.1 In order to return Brooks Equipment for repair or exchange, under these Service Terms and Conditions, or otherwise, Customer must obtain a Return Material Authorization ("RMA") number from Brooks and comply with Brooks' shipping instructions. All returned Equipment must be shipped in original (or equivalent) packaging, 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.

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

#### **6. Shipments.**

6.1 Unless otherwise stated on the Brooks quotation, shipping terms are FCA Origin – Shipper's Dock Chelmsford, Massachusetts or other applicable Brooks' facility. Special packaging requirements requested by the Customer will be at the Customer's expense. Unless specified by the Customer, Brooks will select the carrier, delivery route, and method of packing and shipment.

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

#### **6.3 Export:**

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

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

## 7. Contacting Brooks Service.

7.1 Customers initiate a Service request by calling Brooks using a regional support telephone number, which can be found below and are located on the Brooks Pathway webpage at <https://www.brooks.com/support/semiconductor/pathway-connect/>, as may be amended from time to time.

Location	Phone Number
North America	Toll-Free: +1-800-447-5007 Local: +1-978-262-2900
Europe	Main Support # Toll: +49 364 176 9999 6
Korea	Toll-Free: 1800-5116
Japan	Toll-Free: +81 120-255-390 Local: +81 45-330-9005
Taiwan	Toll-Free: +886 080-003-5556 Local: +886 3-5525258
China	Main Support #: +86 21-5131-7066
Singapore	Toll-Free: +65 1-800-4-BROOKS (1-800-4-276657) Local: +65 6309 0701

7.2 Upon calling Brooks support to report an observed Product Non-Conformance, Brooks shall initiate a Service Request ("SR") to record the observed Product Non-Conformance. The Customer is responsible to provide the following information when reporting a Product Non-Conformance:

- (a) Primary point of contact and preferred method of communication (e.g., telephone, email).
- (b) Physical location of the Product (name of company and address).
- (c) Product serial number & part number.
- (d) Detailed description of the observed Product Non-Conformance.
- (e) Date the Product Non-Conformance was first observed and frequency of the observed Product Non-Conformance.
- (f) Status of the Product (up, limited up, or down).
- (g) Detailed list of troubleshooting steps taken to resolve the observed Product Non-Conformance.

## 8. Brooks Service Response Times.

Outside of any existing Warranty Period or Service Agreement, on-site support, when determined necessary by Brooks, is on a best effort basis. Phone responses will be provided within forty-eight (48) business hours of the local support site. Remote support callback response time from a Brooks Technical Support representative will be typically within 2 business days from initial SR creation. Service activity performed, including but not limited to failure analysis and replacement parts furnished by Brooks which are not covered by Warranty Services defined herein, will be at the expense of the Customer and shall be billed at Brooks current list prices for parts, labor (remote and onsite), and travel and lodging.

## 9. Training.

9.1 Training shall be in accordance with the Brooks quotation.

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

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

9.4 Customer shall not copy or otherwise reproduce any materials (including, but not limited to, electronic training materials and online training content) in whole or in part without Brooks prior written consent.

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

## 10. Installation.

10.1 When installation is not included in the equipment purchase, Brooks shall provide installation Services at an agreed upon cost and executed on a separate agreement. Installation assistance and training will be provided only to the extent expressly provided herein. Except as expressly provided, site preparation and installation are the sole responsibility of the Customer or End-User Customer. Brooks does not accept responsibility for the connection of the Products to non-Brooks Product(s). Should Customer connect or request Brooks to connect the Products to any non-Brooks Product(s), Brooks shall have no liability for any malfunction or damage which may result.

10.2 Installation services require support from all Customer parties associated with delivery, acceptance, and installation of a Brooks Product. This includes, but is not limited to, providing a safe working environment, providing access to required facilities to complete installation activities, and providing coordination with other Customer resources (e.g., shipping and receiving to uncrate and place Product in a predetermined final location).

10.3 All installation activities must be scheduled ahead of time with a local Brooks service manager or director. Customers should provide as much notice as possible prior to the requested installation date to ensure Brooks resources can be scheduled for the requested timeframe. Brooks does not guarantee any onsite support for installation without a prior scheduling with a Brooks service manager or director.

#### **11. Limited Warranties.**

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

11.2 The warranty for Brooks Equipment, quoted and functional repairs, upgrades and replacement parts is contained in Exhibit A.

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

11.4 The exclusive remedies for breach of warranty will be either repair or replacement of the nonconforming Equipment at the sole discretion and expense of Brooks. Customer must notify Brooks within 15 days of discovering a material defect, and must issue a purchase order for the release of any exchange Equipment. Brooks will invoice an exchange fee against this purchase order if the nonconforming Equipment is not returned within the exchange return period.

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

#### **12. Intellectual Property.**

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

#### **13. Force Majeure.**

Neither Party hereto shall be liable for default of any obligation hereunder (other than payment obligations) if such default results from the force majeure which includes, without limitation, governmental acts or directives; strikes; acts of God; war; insurrection, riot or civil commotion; fires, flooding or water damage; natural disaster (i.e., earthquake); epidemics; explosions, embargoes or delays in delivery, whether of the kind herein enumerated or otherwise, which are not within the reasonable control of the party affected. To the extent that, and so long as the obligations of either party are affected by any such cause or event, such obligations shall be suspended.

#### **14. Termination.**

14.1 Customer may terminate a Service Agreement at any time by giving Brooks a ninety (90) day written notice of cancellation and paying an "Early Termination Charge," as defined below:

- a. The "Early Termination Charge" shall include a cost recovery fee equal to 50% of the Service Agreement total term value.

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

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

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

#### **15. Non-Solicitation**

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

#### **16. Limitation of Liability and Exclusive Remedy.**

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

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

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

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

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

#### **17. 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 Customer's business or affairs, including without limitation, data provided or made available by Brooks or Customer, and shall not disclose the same to any person, firm or corporation, nor use such information except as contemplated herein or as otherwise required by applicable law. The following information shall not be considered confidential:

- (i) Information which is already generally available to the public.
- (ii) Information which hereafter becomes generally available to the public, through no fault of the receiving party.
- (iii) Information which was already known to the receiving party prior to the disclosure thereof.
- (iv) Information which is developed by a party independently of and without aid of the information received from the other party.
- (v) Information which lawfully becomes known to a party through a third party which discloses such information to the receiving party without breaching confidentiality obligations to the disclosing party.

(vi) Information which is disclosed pursuant to court order or as otherwise required by law, after giving the disclosing party notice of such required disclosure and after assisting the disclosing party in its reasonable efforts to prevent or limit such disclosure.

### **18. Choice of Law and Arbitration.**

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

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

### **19. Survival Clauses.**

The following provisions will survive the expiration or termination of the transaction contained under these Service Terms and Conditions: Section 3 (Service Fees), Section 4 (Invoicing and Payment), Section 11 (Limited Warranties), Section 12 (Intellectual Property), Section 13 (Force Majeure), Section 15 (Non-Solicitation) Section 16 (Limitation of Liability and Exclusive Remedy), Section 17 (Confidentiality), Section 18 (Choice of Law), Section 19 (Survival Clauses) and Section 20 (General).

### **20. General.**

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

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

20.3 Independent Contractor. Brooks is an independent contractor and not an employee, agent or representative of Customer and no partnership or joint venture is hereby created or implied under this Agreement.

20.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20.5 Headings. Headings in this Agreement are for reference purposes only, and shall not be used to interpret or construe this Agreement.

20.6 Entire Agreement. This Agreement constitute the entire agreement between the parties with regard to the matters dealt with herein, and supersedes all prior representations, negotiations, understandings and agreements, oral or written, between the parties with respect thereto. All purchase orders, forms of acceptance, invoices and other documentation respecting the subject matter of this Agreement issued by Customer shall be deemed to be issued for its own internal purposes, and any provisions therein that are in addition to the terms of 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. This Agreement shall not be modified or amended except in a written agreement signed by both parties.

20.7 Waiver. The failure of Customer or Brooks to enforce any of the terms or conditions of this Agreement shall not be deemed a waiver of any right to enforce this Agreement.

20.8 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.

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

## EXHIBIT A – WARRANTY TERMS AND CONDITIONS

### 1. Warranty Services.

1.1 Warranty. 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 (“Warranty”). Standard Warranty service entitlements include labor support, replacement parts (also referred to herein as components or subcomponents), and travel expenses, except where otherwise noted herein. Brooks has the option to replace parts under Warranty with new, repaired, or refurbished parts. The Customer is responsible for notifying Brooks within fifteen (15) days after discovery of an observed Product Non-Conformance by contacting Brooks using the contact information detailed in Section 7 above.

1.2 Warranty Period. Warranty Service periods are shown below. Unless otherwise noted below, Warranty Service periods begin upon delivery of the Products to the carrier.

Product Type	Service Warranty Period
Automation System Level Products	For OEM Customer, Fifteen (15) months after shipment For End-User Customer, Twelve (12) months after shipment
Automation Stand Alone Products	Non-Serialized: Ninety (90) Days Serialized: Twelve (12) Months
Contamination Control Products	Twelve (12) months from Customer acceptance or Fifteen (15) months from shipment to Customer, whichever occurs first
Spares and Field Replaceable Units (FRUs)	Consumable Parts: Thirty (30) Days Non-Serialized Parts: Ninety (90) Days Serialized Parts: Twelve (12) Months
Depot Repaired Products	Quoted & Functional Repair: Ninety (90) Days Refurbishment & Enhanced Repair: Twelve (12) Months
Field Repaired Products	Quoted & Functional Repair: Ninety (90) Days from Completion
Upgrades	Ninety (90) Days from Completion

Performance of all Warranty Services including, labor, and Product and part replacements, does not extend the duration of the Warranty period.

1.3 Warranty Period Coverage Hours. Warranty Services shall be provided Monday through Friday (unless otherwise denoted) during normal business hours as defined below. Holidays are excluded from Warranty Period coverage and may differ by regional location. Consult with local Brooks field leadership for more information.

Location	Normal Business Hours
North America	8:00 am – 5:00 pm
Europe	8:00 am – 5:00 pm
Israel	Sunday – Thursday, 8:00 am – 5:00 pm
Korea	9:00 am – 6:00 pm
Japan	9:00 am – 5:30 pm
Taiwan	8:30 am – 5:30 pm
China	8:30 am – 5:30 pm
Singapore	9:00 am – 6:00 pm

1.4 Warranty Period Response Times. During the Warranty period in accordance with the process defined herein, unless otherwise agreed upon in a separate agreement, response times are as follows:

- (a) Phone Support: Within (4) Normal Business Hours
- (b) Onsite Support: Within (5) Business Days

1.5 Warranty Labor. Warranty labor provided by Brooks includes troubleshooting, investigating, and replacing defective material including nominal stand-by time. Labor for excessive wait and stand-by times are not covered under warranty and will be billed at Brooks’ current hourly field service labor rates. The Warranty period does not restart for Products repaired during warranty. During the Warranty period, Brooks shall offer technical and Product support via phone, email, or similar remote communications, during normal business hours. The Customer may choose to enhance this coverage outside of normal business hours by executing a separate Service Agreement for Enhanced Warranty from a Brooks Service representative.

When deemed necessary by Brooks, Brooks shall provide Warranty Services at the Customer site, defined by the location in which the Product was initially shipped (i.e., “Ship To” address). If Services meet the definition of Warranty Services defined herein, then no fee will be charged for replacement parts, labor (remote and onsite), and travel expenses. Upon initial Service request creation, phone

support will be provided to address the reported Product Non-Conformance. If additional support is required, Brooks may deem it necessary to provide onsite support. At Brooks discretion, Warranty Services may be completed at locations other than the Customer site at no charge for parts and labor, but at the Customer's expense, for travel expenses incurred by Brooks. Warranty Services may be performed by subsidiaries of Brooks, branches, or distributors ("Agent").

1.6 Warranty Replacement Parts. As defined herein, Warranty replacement parts may be provided as deemed necessary by Brooks. Warranty replacement parts will be provided at standard lead times, but may vary, depending on availability as determined by Brooks. The Customer may execute a stocking agreement to stock parts at a local Brooks facility to facilitate lead times and availability of replacement parts.

1.7 Products Returned and Replaced During Warranty Period. Products and parts replaced by Brooks under Warranty become the sole property of Brooks and will be returned to Brooks by the Customer. Customer may request, in writing, to retain Products and parts replaced under Warranty, however written approval must be obtained from a Brooks representative to retain ownership of Products and parts replaced under Warranty. All returned Products shall adhere to Section 5.

1.8 Products returned by the Customer within the Warranty period. The Products must be received by Brooks within twenty-one (21) calendar days of the shipment date of the replacement Product (provided by Brooks to the Customer) to avoid being assessed a cost equal to the current list price of the returned Product. Customer is responsible for the return shipment of the Product to be replaced or repaired (Freight In to be paid by the customer under DAP Incoterms 2020). Brooks is responsible for the return shipment of the repaired or replacement Product to the Customer, by economy method (Freight Out to be paid by Brooks under DAP Incoterms 2020). Expedited shipping services are available to the Customer for a premium charge.

1.9 Additional Customer Responsibilities During Warranty Period. Customers are expected to provide training to Customer employees to perform first level of support on Customer's installed Brooks Products. Any Warranty claim that is a result of improper training may be deemed billable by Brooks. To provide first level support, the Customer (i) will use service representatives trained by Brooks; (ii) will have purchased all replacement parts from Brooks, including, use of Brooks tooling and fixtures; and (iii) will follow all Brooks troubleshooting, corrective and preventive maintenance procedures, and technical manuals. The first level of support includes, but is not limited to, basic troubleshooting, teaching, leveling, log collection, identifying specific components of the Product, and all other required knowledge to safely utilize the Product. Brooks shall provide "second level" support and will dispatch a Customer Service Engineer ("CSE") to the Customer site for Service support as defined in Exhibit A, Section 1.5.

1.10 Warranty Exclusions. Unless otherwise agreed in writing, the Warranty does not include:

- (a) 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.
- (b) Preventive Maintenance ("PM") activities are not included under the Warranty and is the responsibility of the Customer to schedule and manage. Examples of PM activities include, but are not limited to, periodic visual inspection of the tool, replacement of "wear items" (i.e., filters, tips, O-rings, etc.). The Customer should reference the Product manual or contact Brooks support phone number for any questions on Preventive Maintenance. Any Warranty claim where the Product Non-Conformance is related to improper preventive maintenance processes may result in denial of a Warranty claim and result in a paid activity.
- (c) Brooks Warranty is governed by the Customer signed selection guide. Any examples of Product Non-Conformance that conflicts with the Product's configuration outlined in the latest version of the signed selection guide, dated on or before the Product shipped from a Brooks facility, will be deemed non-Warranty. Any expense by Brooks related to parts, labor, or travel and lodging associated with the Product's behavior or performance that is not specifically called out on the selection guide will be a billable activity with payment expected upon completion of any work associated with changing the tool outside of the scope called out in the selection guide. For any Product without a selection guide, Brooks commits to meeting the stated specifications of Brooks Products and any terms outlined in the Brooks' quotation for the Product and/or any current agreement between Brooks and the Customer.
- (d) Brooks Products that are outside of the standard Warranty period and are not covered by a Service Agreement.
- (e) Onsite Labor spent waiting for Product availability, i.e., unplanned Customer or Customer delays preventing execution of Warranty Services.
- (f) The Warranty defined herein shall not apply to any Product which has been:
  - (i) Repaired or altered other than by Brooks, or its authorized or approved service personnel;
  - (ii) Repaired or altered by a Customer employee not trained by Brooks;
  - (iii) 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;
  - (iv) Operated in any manner inconsistent with the applicable Brooks instructions for use; or
  - (v) Defective for any reason not attributable to Brooks.



## EXHIBIT B – END OF LIFE SERVICE SUPPORT

### 1. End of Life Service Support.

#### 1.1 End-of-Life (EOL) Product Milestones.

- (a) Announcement (A) - The milestone at which a product begins its End-of-Life (EOL) phase.
- (b) Last Purchase (P) - This milestone indicates that there is an opportunity for a last time buy of the product and sets the milestone after which Brooks will not accept additional orders for a product that is in EOL. If there is no "P" defined for the product, then there is no last time buy opportunity.
- (c) Last Shipment (S) - Product may no longer be shipped beyond this milestone.
- (d) Obsolete (O) - This milestone indicates that the product has completed the EOL Phase and is now Obsolete.

1.2 EOL Service Levels. Product support levels change as EOL Product moves through defined EOL milestones. The table below shows the level of service that can be expected after EOL milestones are reached. Timing of EOL milestones varies by Product.

<b>Offering</b>	<b>After Announcement / Before Last Purchase</b>	<b>After Last Purchase / Before Obsolete</b>	<b>After Obsolete</b>
<b>Product Availability</b>	<ol style="list-style-type: none"> <li>1. While inventory on-hand lasts – products are available for purchase at standard lead times and priced at 15% above standard price</li> <li>2. After inventory is depleted – products are available for purchase with prices and lead times determined at the time of customer request</li> </ol>	Not available for purchase	Not available for purchase
<b>Spares Availability</b>	Best efforts	Best efforts	Best efforts
<b>Technical Support</b>	Standard	Standard	Best efforts
<b>Field Services</b>	Standard	Standard	Best efforts
<b>RMA</b>	Standard	Standard	Best efforts
<b>Training</b>	<ol style="list-style-type: none"> <li>1. All existing credits expire 90 days after "A"</li> <li>2. Best efforts</li> </ol>	Best efforts	Not available

1.3 Best Efforts Throughout EOL Milestones. Pricing and availability are determined at the time of request.

1.4 End-of-Life Product Notification. EOL Product notifications are distributed to Customers using a Product Change Notification document.