

(d) Customer Changes

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

5. PRICE

Customer agrees to pay Brooks for the Products purchased or licensed pursuant to the relevant Order Acknowledgement Form in accordance with price schedules then in effect when Brooks delivers such Order Acknowledgement Form to Customer. Discounts applied to such Products shall be based upon the quantity of each type of Product having an accepted delivery date within twelve (12) months of order submission contained in each separate Order Acknowledgement Form. Order Acknowledgement Forms shall not be combined for the purpose of determining applicable discounts. Applicable prices and discounts are set forth in a written quotation provided to Customer by Brooks. Prices are valid only if Customer executes this Agreement and submits it, along with its Purchase Order, to Brooks within the validity period specified in the Quotation. Brooks shall retain a security interest in the Systems until the purchase price is paid in full. Customer shall execute such further documentation as Brooks requests in order to carry out the intent of the previous sentence.

6. TERMS OF PAYMENT

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

returned to Brooks' facility to undergo quality assurance procedures prior to reshipment. The cost of transportation and the performance of the quality assurance procedures, at Brooks' then applicable field service rates, will be paid by Customer. In cases where handling and storage become necessary per above, it will be the responsibility of Customer to notify Brooks when shipment is to be made.

8. TESTING

(a) Testing by Brooks

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

(b) Rejected Products

In the event that the Brooks Products are validly rejected by Customer, Brooks shall promptly repair or replace the Brooks Products at Brooks' expense provided that Brooks has received notice of such rejection upon completion of Brooks' testing thereof.

9. WARRANTY AND SERVICES

(a) Warranty

(i) Brooks Products. Brooks shall warrant the Brooks Products to be free from defects caused by faulty materials or poor workmanship and to conform to specifications furnished or approved by Brooks for the period of twelve (12) months from the date of shipment from Brooks to Customer as set forth in Article 7(a) hereof, except that:

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

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

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

Product to the Customer, by economy method. (Freight Out to be paid by Brooks under DAP Incoterms 2010). Expedited shipping services are available to the Customer for a premium charge. All returns must be received by Brooks within 21 days of the shipment date of the replacement product to avoid being assessed a charge equal to Brooks' prevailing list price of the Product in question. EFEM's may only be returned to Brooks with Brooks' prior written consent. Should Brooks deem it necessary, Brooks will provide the Warranty Services at Customer's site and at no charge for parts, labor or travel. Brooks' warranty labor includes only time spent actively troubleshooting, investigating and replacing defective material including nominal stand-by time. Labor for excessive wait and stand-by times will not be covered under warranty and will be billed at Brooks' prevailing field service rates. The warranty period does not restart for Products repaired during warranty.

(ii) Third Party Products. Brooks does not warrant and is not responsible for any Third Party Products or services. Customer's sole and exclusive rights and remedies with respect to any such Third Party Products or services are against Third Party and not against Brooks. However, to the extent permitted by Brooks' agreement with Third Party, Brooks shall assign to Customer any Third Party repair warranties applicable to the Third Party Products.

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

(iv) Brooks' liability hereunder in any case is expressly limited to the repair or replacement of components or subcomponents of the Brooks Products not complying with this Agreement or at Brooks' election, to the repayment of, or crediting Customer with, an amount equal to the amounts received by Brooks for such Brooks Products, whether such liability is for breach of warranty or negligence. 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 (i) 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.

approved in writing by Brooks, where such infringement would not have occurred but for such combination; (2) the modification or customization of Brooks Products not performed by Brooks, where such infringement would not have occurred but for such modification or customization; (3) the use of a Brooks Product in an application for which it was not designed or intended, where such infringement would not have occurred but for such use; (4) a claim based on intellectual property rights owned by Customer or any of companies controlled by, controlling or under common control with Customer; or (5) where the Brooks Products were designed by Brooks to Customer's specification. Contributory

CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF BROOKS FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 8 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY THE CUSTOMER TO BROOKS WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL BROOKS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER BROOKS (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

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

14. CHANGES AND DISCONTINUANCE

Brooks reserves the right to make changes in the specification of the Brooks Products or parts thereof, or to discontinue manufacturing the Brooks Products. Brooks shall provide sixty (60) days written notice to Customer prior to such change or discontinuance. Brooks shall not incur any liability thereby or any obligation to provide such changes or improvements on Systems previously purchased or sold by Customer.

15. 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

- (ii) Belarus; and
- (iii) the Russian Federation.

(c)

State of persons subject to sanctions by the U.S. Government for engaging in activities relating to proliferation or Iran;

(ix) any individual or entity that appears on any other comparable sanctions- or export controls-related list of persons subject to sanctions and/or trade restrictions administered and maintained by any governmental entity in any jurisdictions in which the Brooks Products are manufactured, delivered, and/or used; and

(x) any entity that is owned or controlled by, or otherwise acting on behalf of, any of the foregoing, or is the government, or any agency or instrumentality of the government of, any of the Embargoed Destinations, or is owned or controlled by, or acting on behalf of, the government, or any agency or instrumentality of the government of, any of the Embargoed Destinations (collectively, "Restricted Parties").

Customer further acknowledges that the above-described lists of Restricted Parties are subject to frequent changes, often without advr118Tt (s)-1 (e) 0 Tw - (s4 BDC -0.00(1)-2 322 (s)-1 (.150 Tw 8.5 0 0 (a)4 (n0 (11

This Agreement may be terminated:

(i) By an agreement in writing duly signed by the parties hereto,

(ii) By either party at will, with or without cause, upon not less than ninety (90) days notice in writing, given by registered or certified mail to the other party;

(iii) By either party in the event that the other party is in material breach of this Agreement and fails to cure such breach within thirty (30) days of receipt of notice thereof from the non-breaching party or if the other party goes into bankruptcy, liquidation, receivership of similar proceedings.

(b) Sales after Termination

The acceptance of any order from or the sale of any Products to Customer after the termination of this Agreement shall not be construed as a renewal or extension hereof nor as a waiver of termination.

(c) Survival Clauses

The expiration or termination of this Agreement shall not relieve either party of any liability which accrued prior to the termination or expiration date. Articles 1, 6, 7(d), 8, 9, 10, 11, 12, 13, 15, 16, 17, 20, 21(b) and (c), 22, 23, 24 and 25 and Exhibit A of this Agreement shall survive the termination or expiration hereof.

22. GOVERNING LAW

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

23. ARBITRATION

All disputes arising out of or relating to this Agreement shall be finally resolved by arbitration conducted in the English language in Boston Massachusetts, U.S.A. under the commercial arbitration rules of the United Nations Commission on International Trade Law. Each party shall appoint an arbitrator and the two arbitrators so appointed shall jointly appoint a third arbitrator; provided, however, that if they cannot agree (or if one party refuses to appoint an arbitrator), then this third arbitrator shall be appointed by the President of the American Arbitration Association. Both parties shall bear equally the cost of the arbitration. All decisions of the arbitrator(s) shall be final and binding on both parties and enforceable in any court of competent jurisdiction. Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement. Notwithstanding anything contained in this Article to the contrary, Brooks shall have the right to institute judicial proceedings against 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.

24. 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; 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.

25. MISCELLANEOUS

(a) Entire Agreement

This Agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein, and supersedes all prior representations, negotiations, understandings and agreements, oral or written, between the parties with respect thereto. All purchase orders, forms of acceptance, invoices and other documentation respecting the subject matter of this Agreement issued by 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. The terms and conditions of this Agreement shall not be modified or amended except in a written agreement signed by both parties.

(b) Assignment

This Agreement is not assignable or transferable by Customer in whole or in part, except with the written consent of Brooks. This Agreement and any of Brooks rights and obligations hereunder may be assigned by Brooks, upon giving written notice to Customer.

(c) Notices

i) Any legal notices provided for under this Agreement shall be deemed effective when delivered in person or seven (7) days after deposit in the mails by registered or certified air mail (return receipt requested) postage prepaid and addressed to the respective address listed in the introduction of this Agreement, or to such different address as either party may designate in writing to the other pursuant to this Article.

ii) Any other notices provided for under this Agreement shall be directly sent to the individuals specified by each of Customer and Brooks on the signature page of this Agreement, or to such different individuals as either party may designate in writing to the other pursuant to this Article.

(d) 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 any terms and conditions of this Agreement.

(e) Separability

I this AAgraon (om)-2-2 (du)4 (t)-o thiss or 3 (unde)-6 (r)-10 (pa)4

(f) 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.

(g) Government Approvals

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

(h) 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.

(i) Headings

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

EXHIBIT A

SOFTWARE LICENSING TERMS AND CONDITIONS

1. General. With respect to any software products incorporated in or forming a part of the Products hereunder, Brooks and Customer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Brooks or its licensor, as the case may be, retains all rights and interest in software products provided hereunder. The terms and conditions in this Exhibit A are intended to supplement, and not replace, the terms and conditions in the remainder of this Agreement. In the event of a conflict between the terms and conditions of this Exhibit A and the terms and conditions in the remainder of this Agreement, the terms and conditions of this Exhibit A shall prevail.

2. License. The grant to Customer of rights to the Brooks Software embedded in the Brooks Products which Customer purchases from Brooks hereunder is a non-exclusive royalty-free perpetual license to use such Brooks Software in the operation of such Brooks Products. Customer may use the Brooks Software only in machine readable form. A separate license is required for each item of Brooks Equipment on which a copy of the Brooks Software will be used. Customer shall not sell, assign, transfer, copy or sublicense such Brooks Software, provided that a single copy may be made for archival and systems recovery purposes. Customer must reproduce and include the original copyright notice and other proprietary notices on any copy, in whole or in part, made of the Brooks Software programs and related documentation.

3. Ownership. It is recognized that in the course of the transactions contemplated by this Agreement, Brooks Software may be delivered to Customer on a licensed basis in printed form, or in any of several possible machine-readable forms, including but not limited to magnetic tape or disk, paper tape or read-only memory (ROM) device. Such Brooks Software and any copies thereof, and all copyright, trade secret, patent, trademark and other intellectual or industrial property rights therein, is and shall remain the sole property of Brooks. Customer's rights and licenses to use such Brooks Software shall be governed by the terms and conditions of this Agreement, including this Exhibit A. Brooks Documentation shall remain the property of Brooks.

4. Warranties. The Warranties described in Article 9(a)(i) of the Agreement shall only apply to the current release of the Brooks Software and shall not apply to any custom Brooks Software or customer specific changes to the Brooks Software. Software that contains bug fixes and error corrections, as determined in Seller's sole discretion, are included in Warranty.

5. Confidentiality. The Brooks Software is valuable to Brooks and shall be treated as confidential information of Brooks subject to the confidentiality provisions of Article 15 of the Agreement. The ideas and the expre3 (A) 1AMCectnitioks vc-1 (as)-5 (d)-4 7 (ons).vsAMCID 23 BDC 12 04 (nd t)-2 (he)4 (xpr(e)6 ((s))-7 a

Software and who are bound in writing to preserve the confidentiality thereof. Customer shall take all reasonable steps to safeguard the Brooks Software and to ensure that no unauthorized persons have access to the Brooks Software, and to ensure that no persons authorized to have such access shall take any action which would be in violation of this Agreement if taken by Customer. Customer shall promptly report to Brooks any actual or suspected violation of this Paragraph and shall take further steps as may reasonably be requested by Brooks to prevent or remedy any such violation.