

**General Business Terms for the Supply of Products and Performance of Work**  
**Brooks Instrument GmbH**  
**Zur Wetterwarte 50, 01109 Dresden**  
**June 2020**

**§1 General - Scope of Application**

- (1) These General Business Terms will apply to the supply of Brooks Instrument GmbH's (hereinafter referred to as Brooks) products and to the performance of work and services on the basis of the contract concluded between Brooks and the Client unless otherwise stipulated in the respective clause. For purposes of these General Business Terms, Client is defined as the purchaser of the product or service from Brooks.
- (2) Brooks' General Business Terms will apply exclusively; any terms by the Client contrary to, deviating from or supplementary to Brooks' General Business Terms shall not apply unless Brooks explicitly approves their validity in writing. Brooks' General Business Terms will apply even where Brooks unconditionally delivers or provides service despite being aware of terms by the Client that are contrary to or deviate from Brooks' General Business Terms.
- (3) The Client is giving Brooks his approval for awarding work contracts to third parties.
- (4) Brooks' General Business Terms will only apply in relation to entrepreneurs according § 310 Sect. 1 BGB.

**§2 Offer-Acceptance**

- (1) Brooks' offers are subject to change and Brooks will not be obligated to accept an order. All orders placed in writing or verbally must be confirmed in writing by Brooks. Issuance of an invoice will likewise be equivalent to acceptance. The offer issued by the Client is a binding offer. Brooks has the right to accept this offer within two weeks.
- (2) The information, drawings, illustrations, technical data, weight, measurement and performance specifications in brochures, catalogs, circulars, advertisements, price lists or documents corresponding to the offer will only be binding where compliance therewith is explicitly agreed on in the contract or where reference is made to the aforementioned documents in the contract.
- (3) Brooks reserves and retains all ownership rights and copyrights to the illustrations, drawings, calculations and other documents. This will also apply to written documents marked as "classified" and all information furnished by Brooks to Client. Brooks' express written approval is required prior to disclosure to third parties.

**§3 Scope of Services**

The scope of work and services will be primarily based on the written contract and specifications.

**§4 Special Terms for the Manufacture of Customized Products for the Client**

- (1) Upon placement of the order, the area of assignment and purpose of use of the product being manufactured is to be specified.
- (2) Supplementary information material and documents necessary to manufacture the products are to be provided to Brooks by the Client without requirement of a special request upon placement of the order. Where the information material provided is inadequate, Brooks will have the right to request further information and/or material from the Client.
- (3) The assignment, procedure and type of results will be regulated in written agreements between the contracting parties. Any deviations, amendments or additions to the assignment, procedure and type of results or verbal ancillary agreements will only be valid subject to Brooks' written confirmation.
- (4) The Client will ensure that the reports, organizational plans, drafts, drawings, lists and calculations made by Brooks within the scope of the order are only used for his own purposes and are not passed on to third parties.

**§5 Special Terms for the Software Contained in the Products**

- (1) The software in Brooks' products is subject to copyright and intellectual property rights as well as rights of use.
- (2) Unless expressly agreed otherwise, the Client will only acquire a simple, non-exclusive right of use to the software contained in the supplied product. In other respects, the provisions of the Copyright Law (§§ 69 a ff. UrhG) will also apply to the rights of use.
- (3) Editing of the software contained in the supplied products is not permitted unless otherwise permitted by the provisions of the law or otherwise agreed on in the contract or applicable business terms.

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**§6 Description of Products/ Client's Possibility to Participate / Guaranteed Feature**

- (1) Features of samples are only binding after express written agreement. The data contained in data sheets, brochures and other advertising and information material are regarded as a guideline and will only become a binding part of the contract where this is expressly agreed to in writing by Brooks.
- (2) Specified features will only be regarded as guaranteed features if expressly designated as such and agreed to in writing by Brooks.
- (3) Where there is an analysis certificate for a product, the information therein will be regarded as the agreed features of the product.

**§7 Exclusion of Types of Use**

- (1) Brooks' products may not be sold in countries subject to an embargo. Moreover, Brooks' products may not be used in nuclear plants and nuclear systems components or similar plants/systems components or in military equipment and for military purposes. Client (i) accepts Goods and Services in accordance with the foregoing restriction, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Brooks and Brooks' Affiliates from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Brooks' liability is based on negligence or strict liability.
- (2) The Client will ensure that he and his clients comply with the cases of exclusion of use specified in §7 para. 1 as well as with all German statutory and official regulations and local statutory and official regulations in place at the place of delivery, in particular with regard to shipping, storage and use of Brooks' products. The Client will be obligated to release Brooks from all customs duties, levies, fines and penalties incurred by acts and omissions of his clients.

**§8 Prices - Payment Terms**

- (1) The prices agreed on in the respective contract will be authoritative. Client will make additional payments to Brooks for Work and services going beyond the scope of the contractually agreed work.
- (2) Brooks' prices are exclusive of value added tax; it will be charged separately on the invoice at the statutory rate on the date of the invoice.
- (3) Deduction of discount will require a separate written agreement.
- (4) Unless otherwise agreed, Brooks' invoices are payable net (without discount) within 30 days after the invoice date. The legal provisions regarding the consequences of delayed payment will apply.
- (5) The Client will only have a right of set-off where his counterclaims have been determined as res judicata, are uncontested or have been acknowledged by Brooks. Moreover, he will have the right to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

**§9 Price Change**

- (1) Unless a fixed price has been explicitly agreed, Brooks reserves the right to change its prices accordingly where cost decreases or cost increases arise 4 months or later after conclusion of the contract, in particular on the basis of tariffs or changes in the prices of materials.
- (2) All amendments to the agreement based on a change order request, in particular where the changes were caused by discrepancy between the information provided and the actual possible performance must be remunerated as additional costs where additional costs are incurred.

**§10 Order Cancellation**

Where the Client cancels a confirmed order, Client will be liable to Brooks for 10% of the order value for the costs incurred by processing the order and for lost profit. Brooks shall be allowed to prove that a higher loss has been incurred and / or higher expenses have been incurred and Brooks shall be entitled to claim these losses / expenses from the Client instead of the lump sum. Client can prove that no or only a significantly lower loss and / or substantially lower expenses than in the amount of the lump sum have been incurred.

**§11 Delivery Period for the Products**

- (1) The prerequisite for the start of the specified delivery period is the settlement of all technical issues.
- (2) Client's punctual and proper performance of its duties is the prerequisite for compliance with Brooks'

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duty to deliver the products or services within the agreed time frame. The right to the plea of non-performance of the contract is reserved.

(3) Where the Client delays acceptance or where he culpably breaches other participation duties, Brooks will have the right to demand compensation for the damage incurred, including any additional expenses. The right to further-reaching claims is reserved.

(4) Where the prerequisites in Sect. (3) are given, the risk of accidental loss or deterioration of the purchase item will pass to the Client at the time at which the delayed acceptance or obligations started for him.

#### **§12 Force Majeure and Performance Impediments**

Where production, completion and delivery deadlines have been specified by Brooks and made the basis of an order placement, such deadlines will be extended in the case of strike or other cases of force majeure for the duration of the delay. The same will apply to all unforeseeable damage, impediments and difficulties for which Brooks is not responsible such as lack of raw materials, operational disruption, labor disputes/strikes, official measures, cessation of delivery sources, breach of participation duties of the Client, etc. In such cases, Brooks will have the right to perform and complete the work with the respective delay and to delivery with an adequate preparation period.

#### **§13 Delivery- Passing of Risk- Packaging Costs**

(1) Delivery will be in accordance with the agreed trade clauses, to be interpreted in conformity with the Incoterms valid upon conclusion of the contract.

(2) Unless otherwise to be concluded from the order confirmation, delivery "ex works" (EXW) is being agreed on in accordance with Incoterms 2020. The risk of accidental loss and deterioration of the goods will pass to the client/purchaser upon hand over, in the case of shipment purchase, upon delivery of the item to the shipping agent carrier, or other party or institution assigned with the shipment.

(3) Separate terms will apply to the return of packaging.

#### **§14 Inspection and Acceptance of Work**

To the extent that the products were installed in accordance with a separate agreement or Brooks performed the work the Client will test the products together with Brooks and its employees or agents upon request. Where the products are essentially in compliance with the contract, the Client will declare acceptance immediately in writing. § 377 HGB applies.

#### **§15 Warranties**

(1) In the case of defective work Brooks may at its sole option rectify the work or product or manufacture a new product.

(2) The prerequisite for the Client's rights in the case of defects of purchase items is that the Client has properly complied with his inspection and reporting duty pursuant to § 377 HGB.

(3) In the case of a defect, Brooks will reserve the right to choose the type of subsequent performance. Claims of the Client for necessary expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded insofar as such expenses increase because the products were transferred to a location other than the place of delivery, unless such transfer corresponds to the product's designated use.

(4) Where the subsequent performance fails or in case Brooks finally refuses performance or rectification of the defect due to disproportionately high costs, the Client will have the right to rescission. If the defect is insignificant, Client may only demand a reasonable reduction of the purchase price of the defective product. Otherwise, the right to a reduction of the price shall be excluded.

(5) Liability for damages is subject to the limitations set out in §16 below. No liability for material defects is being assumed for damage caused by improper equipment, in particular electrochemical or physical impact, non-compliance with installation, operating and maintenance instructions as well as improper alterations or repair work. In particular, the relevant regulations for accident prevention, storage and transport as well as all additional relevant regulations, in particular official permits, warning signs, instructions for use are to be complied with.

(6) The warranty period shall be 12 months from the passage of risk.

(7) Services are warranted for twelve (12) months from the date of performance and are limited to the service work provided.

(8) The statutory limitation period shall apply to claims for damages in cases of intent and gross negligence as well as in cases of injury to life, limb and health which are caused by Brooks' fault.

(9) Brooks shall not be liable for any infringement of a 3<sup>rd</sup> party's intellectual property right caused by the Goods in the

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event that:

- (i) such infringement arises as a result of Brooks or Brooks' Affiliates having followed a design or instruction furnished or given by Client, or the Goods having been used in a manner or for a purpose or in a country not specified by or disclosed to Brooks prior to the date of the Contract or in association or combination with any other equipment or software; in such case, Client shall indemnify Brooks and Brooks' Affiliates against all reasonable costs and damages which Brooks and Brooks' Affiliates may incur as a result of any such infringement; or
- (ii) Brooks or Brooks' Affiliates have at its expense procured for Client the right to continue to use the Goods or has modified or replaced the Goods so that the Goods no longer infringe.
- (iii) Client has failed to give Brooks the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Client and/or Client has failed to permit Brooks, at Brooks' expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim, or
- (iv) Client has made without Brooks' prior written consent any admission which is or may be prejudicial to Brooks or Brooks' Affiliates in respect of any such claim or action, or
- (v) the Goods have been modified without Brooks' prior written authorization.

#### **§16 Liability**

Irrespective of the legal grounds for liability, Brooks can only be held liable in case of (a) Brooks' intentional misconduct, (b) Brooks' culpable breach of major contractual obligations, (c) the gross negligence of Brooks' corporate bodies or executive officers, (d) culpable bodily injury, death and/or damage to personal health caused by Brooks; (e) Brooks' fraud; and/or (f) personal injury and property damage to personal items caused by Brooks, provided that liability exists under the Product Liability Act for privately used items. In the event of the breach of major contractual obligation Brooks shall also be liable for gross negligence on the part of non-executive employees or for simple negligence on the part of corporate bodies and executive officers. In the event of simple negligence, Brooks' liability is limited to reasonably foreseeable damage typical to the given type of contract.

#### **§17 Reservation of Ownership/ Use**

(1) Brooks reserves the right to ownership of the products supplied to Brooks within the framework of the purchase and/or work contract as well as the right of use to the software contained in the supplied product (§5 Sect. 2) until complete satisfaction of Brooks claims from the contract.

(2) In the case of breach of contract by the Client, in particular delayed payment, Brooks will have the right to take back the purchase item. Taking back the purchase item will constitute rescission of the contract. After taking back the purchase item, Brooks will have the right to sell it and the proceeds are to be deducted from the Client's liabilities, minus adequate sales costs.

(3) The Client must treat the products supplied and/or purchase item with care; in particular he will be obligated to insure it adequately at replacement value against damage by fire, water or theft. Where maintenance and inspection work is necessary, the Client must carry it out in good time at his own expense.

(4) In the case of seizures or other type of intervention by third parties the Client must notify Brooks immediately in writing, enabling Brooks to bring a third party appeal pursuant to §771 ZPO. To the extent that the third party is unable to pay Brooks the court and out-of-court settlement fees of a lawsuit pursuant to §771 ZPO, the Client will be liable for the loss incurred by Brooks.

(5) The Client has the right to resell the purchase item in the routine course of business; however, he is already assigning to Brooks all claims to the amount of the final invoice amount (including VAT) of Brooks' claim incurred to him against his clients or third parties from resale regardless of whether the purchase item was resold without or after processing. The Client will remain authorized to collect this debt even after assignment. Brooks' authorization to collect the debt will remain unaffected. However, Brooks will be obligated not to collect the debt as long as the Client complies with his payment duties from the proceeds earned, is not in arrears with payment and where in particular conciliation or insolvency proceedings have not been filed for or payment has ceased. Brooks may demand that the Client disclose the assigned claims and the debtors thereof, provide all necessary information for collection, distribute the corresponding documents and inform the debtors (third parties) of the assignment.

(6) Processing or alteration of the purchase item will always be carried out for Brooks by the Client. Where the purchase item is processed with other items not belonging to Brooks, Brooks will acquire co-ownership in the new item on the basis of the ratio of the value of the purchase item (invoice final amount, including VAT) to the other processed items at the time of processing. For the item originating through the processing the same will apply as in the case of the purchase item delivered subject to reservations.

(7) Where the purchase item is inseparably mixed with items not belonging to Brooks, Brooks will acquire co-

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ownership of the new item on the basis of the ratio of the value of the purchase item (invoice final amount, including VAT) to the other mixed items at the time of the mixing. Where the mixing is carried out in such a way that the Client's item is to be regarded as the principal item, it is agreed that the Client will assign co-ownership to Brooks proportionally. Thus, the Client will safeguard the ensuing sole ownership or co-ownership on Brooks' behalf.

(8) Brooks will be obligated to release the securities it is entitled to at the Client's request to the extent that the realizable value of the securities exceed that of the claims being secured by more than 10%; the selection of the securities to be released will be incumbent on Brooks. (9) All intellectual property disclosed to Client or generated or owned by Brooks or Brooks' Affiliates and all rights and obligations therein will remain the property and responsibility of Brooks or Brooks' Affiliates and must be kept confidential by Client. Any right of use or license granted by Brooks or Brooks' Affiliates is limited to use/resell/warehousing and maintenance of tangible Goods delivered by Brooks or Brooks' Affiliates.

#### **§18 Brooks Employees**

Brooks' sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Client documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on Brooks or such Brooks employees.

#### **§19 Service Terms**

The following terms and conditions apply to any on-site Services provided by Brooks:

- (1) Services will be provided at Brooks' then current service rates.
- (2) Client shall prepare the site for the Services. If the site is not prepared for the Services upon Brooks service personnel's arrival at the agreed upon time and date for Services, Brooks may charge Client for any delay and/or travel time at Brooks' regular service rates.
- (3) Client shall provide Brooks with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses that are applicable to Client's local jurisdiction.
- (4) Brooks may refuse, without any liability, to provide Services and to allow Brooks service personnel to suspend Services or vacate any site where, in Brooks' opinion, performance of Services would pose a risk to the safety of any person. In such event, Client is responsible for payment of any delay and/or travel time at Brooks' regular service rates.
- (5) Client must provide at least 48-hours' notice of cancellation of any Service order. If Client cancels with less than 48-hours' notice, Client is responsible for any costs incurred by Brooks caused by such cancellation.

#### **§20 Form of Declarations**

Legally relevant declarations and notifications which the Client must submit to Brooks or to a third party must be in writing.

#### **§21 Severability**

If any provision of these General Business Terms is held to be invalid under any statute or rule of law, such provision shall not affect the validity of the remainder of the Contract. Unlawful or unenforceable provisions shall be replaced by provisions which come closest to the economically intended by the parties; otherwise, statutory law shall apply.

#### **§22 Place of Jurisdiction - Place of Performance**

- (1) Brooks' business domicile will be the place of jurisdiction; however, Brooks will also have the right to sue the Client at the court at the place of the Client's domicile.
- (2) The laws of the Federal Republic of Germany will apply; the United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
- (3) Unless otherwise to be concluded from the order confirmation, Brooks' place of business will be its place of performance.