

TERMS AND CONDITIONS OF SALE

1. **Scope.** The terms and conditions of sale ("Terms and Conditions") set forth herein shall apply to all sales of goods and services ("Products") by BUCHI Corporation ("Seller") to any person or entity ("Buyer"). No term or condition of the Buyer's purchase order which is different from, or in addition to, the terms and conditions set forth herein or in any applicable quotation shall be binding on Seller unless, and only to the extent, such different or additional terms or conditions are expressly acknowledged and accepted by Seller in writing.
2. **Quotations and Orders.** A price quotation issued by Seller shall not constitute an offer and the placing of an order by Buyer shall not constitute acceptance of any offer and shall not create a binding and enforceable contract by and between Buyer and Seller. Seller shall not be obligated to fulfil any order unless Seller: (1) expressly agrees to accept the order in writing; or (2) delivers the Products specified in the order. Once an order is accepted by Seller, Buyer may not be cancel the order or defer delivery of the Products, except with the written consent of Seller. Notwithstanding anything in the foregoing to the contrary, Seller shall not amend the Purchase Price stated in a quotation except as provided in Section 6.1 which is captioned, "Prices."
3. **Time of Delivery.** Delivery schedules are approximate and are subject to change. Time of delivery shall not constitute a material term to these Terms and Conditions. Seller shall use reasonable efforts to ship all Products by the agreed upon delivery date, but in no event shall Seller be liable in any way for any failure to ship any Products by the agreed upon delivery date.
4. **Force Majeure.** If Seller is prevented from performing its obligations solely by acts of God, fire, floods, war, terrorism, embargoes, labor disputes, strikes, acts of sabotage, riots, accidents, delays of carriers, delays of subcontractors, delays of suppliers, governmental acts, shortages in materials or manufacturing facilities, or other circumstances beyond the reasonable control and without the fault or negligence of Seller, Seller shall have the right to cancel Buyer's purchase order in full or in part without liability, other than to return any deposit or prepayment that is unearned by reason of the cancellation. In the event that Seller is unable for any of the above reasons to meet the demands of its customers (including Buyer) with respect to Products ordered, Seller may allocate its available inventory of Products among any or all purchasers, as well as departments and divisions of Seller, on such basis as Seller may deem fair and practical in its sole discretion without liability for any failure of performance which may result therefrom.
5. **Shipment and Risk of Loss.** Products are sold F.O.B. shipping point (Seller's facility), freight collect with all costs invoiced to or absorbed by Buyer. Unless otherwise specified in writing by a duly authorized representative of Seller, mode of shipment shall be chosen by Seller. All transportation, insurance, packaging charges and applicable fees are in addition to the Purchase Price, as that term is defined herein, of the Products and shall be charged to and paid for by the Buyer. Title and risk of loss shall pass to the Buyer upon delivery of the Products to the carrier for shipment to the Buyer. In no event shall any loss, damage, injury or destruction of the Products after risk of loss has passed to Buyer release the Buyer from its obligation to make payment required herein. Unless otherwise agreed in writing, Seller reserves the right to make partial shipments and to submit invoices for partial shipments.
6. **Prices; Terms of Payment.**

6.1. **Prices.** The Purchase Price for the Products shall be the purchase price stated in the quotation provided by the Seller to the Buyer with respect to such Products, provided, however, that if the quotation expired by its terms, the Purchase Price for the Products shall be Seller's list price as of the date such Products are ordered to Buyer ("Purchase Price"). Unless otherwise specified in a quotation, the Purchase Price quoted shall not be effective for more than 30 days after the date of the quotation, after which the Purchase Price shall be Seller's then current list price. In addition to the Purchase Price for the Products, all applicable packaging charges and all freight, insurance and other charges incurred by Seller in connection with shipment shall be charged and invoiced to Buyer. All prices quoted are in local currency.

6.2. **Taxes.** The Purchase Price does not include taxes. Consequently, the amount of any value added tax or any sales, use or similar tax applicable to the sale of Products or to the use of such Products by the Buyer shall be paid by the Buyer. Buyer shall reimburse Seller for all taxes, excises or other charges which Seller may be required to pay to any government (national, state, or local) or agency thereof upon the sale, production or transportation of the Products hereunder.



6.3. Payment. Unless otherwise agreed in writing, payment is due within 30 days of the date of invoice. Invoices shall be issued upon shipment. Past due invoices are subject to a monthly service charge at a rate equal to the lesser of 1-1/2% per month or the maximum rate from time to time permitted by applicable law. Seller may require full or partial payment in advance of shipment, if, in the judgment of Seller, the financial condition of the Buyer so warrants.

6.4. Minimum Order Amount. The Minimum Order Amount is equal to a Purchase Price of \$125 US Dollars ("Minimum Order Amount"). For the avoidance of doubt, the Purchase Price does not include transportation, handling, insurance, packaging charges, taxes, and applicable fees. Buyer agrees that any order in which the Purchase Price is below the Minimum Order Amount will be grossed up to the Minimum Order Amount.

7. Default, Acceleration and Stoppage in Transit.

7.1. Default. Non-payment of an invoice when due will be considered a "Default" and shall constitute a material breach of the terms of the sale.

7.2. Acceleration. In addition to other remedies otherwise available to Seller upon a Default, and without notice to Buyer, Seller may declare any or all amounts owed to Seller by Buyer immediately due and payable, any previously agreed extension of credit to the contrary notwithstanding, whether or not the amounts due and payable involve the same or a different order.

7.3. Stoppage in Transit. In the event of a Default or any other event which gives Seller a reasonable doubt as to the creditworthiness of Buyer, Seller reserves the right to stop any shipment in transit with notice to the Buyer. Such stoppage in transit shall be without prejudice to Seller's right to pursue other remedies or to recover any further expenses or damages it may suffer.

8. Warranty.

8.1. Warranty Terms. Subject to the terms and conditions set forth herein, Seller warrants that all Products manufactured by Seller (and only Products manufactured by Seller) identified as such in the applicable quotation or other document delivered by Seller to Buyer shall comply with the specifications described in such quotation (if any) and will be free from defects in material and workmanship under normal use and service. The warranty provided herein shall not cover consumable items such as wetted parts, glassware or items intended for consumption or replacement on a routine basis. The failure of Buyer to properly maintain the Products or to use the Products in accordance with Seller's instructions shall void the warranty provided herein. Seller's obligations for breach of this warranty is limited to, and Buyer's exclusive remedy shall be, return of the Product and refund of the Purchase Price paid therefore or repair or replacement of the Product, at the election of Seller. The warranty covers only parts and labor that is performed by BUCHI trained personnel. Seller may, in Seller's sole discretion, provide on-site warranty service at Buyer's location. Upon receipt of a Return Material Authorization issued by Seller with respect to an allegedly defective Product (as described in Section 9.1 below), Buyer shall return the Product to Seller F.O.B. Seller's factory. Original packaging of the instruments purchased by and delivered to Buyer should be retained by Buyer for use in subsequent shipments. If after Seller examines the allegedly defective product Seller determines that the warranty set forth in this Section 8.1 has been breached with respect to such Product, Seller may, at its option, either repair or replace the defective Product and deliver the repaired Product or replacement to Buyer F.O.B. Buyer's U.S. location or refund the Purchase Price paid by Buyer therefore, at the election of Seller. The warranty set forth in this section 8.1 is in lieu of all other warranties, expressed or implied and Seller expressly disclaims any such warranties, including, without limitation, the warranty of merchantability and the warranty of fitness for a particular purpose.

8.2. Period. Except as provided below, the warranty set forth in Section 8.1 shall remain in force for a period of 1 (one) year from the date of shipment of a given Product and the warranty shall expire upon the expiration of such one (1) year period. All warranty claims must be received in writing by Seller prior to the expiration of such one (1) year period. Seller shall have no obligation to Buyer with respect to any warranty claims received by Seller after such one (1) year period. Notwithstanding the foregoing, warranty extensions or enhancements and upgrades are available from Seller provided that Seller shall only be bound to the extent any such enhancements and/or upgrades are offered in writing by Seller and accepted in writing by Buyer on the terms and conditions set forth in such offer. Notwithstanding the foregoing, used Products, reconditioned Products and remanufactured Products (when available) shall be warranted for a period of ninety (90) days from the date of shipment of such Products and the warranty shall expire upon the expiration of such ninety (90) day period. All warranty claims with respect to such Products must be received in writing by Seller prior to the expiration of such ninety (90) day period. Seller shall have no obligation to Buyer with respect to any warranty claims received with respect to such Products after such ninety (90) day period.

8.3. Availability of Spares and Service Parts. The availability of all mechanical and glass parts is guaranteed for 10 years after the last delivery. The availability of electronic components is guaranteed for 5



years after the last delivery. Availability is subject to discontinuation by BUCHI's suppliers and other causes set forth in Section 4, which is captioned, "Force Majeure". The delivery dates for the aforementioned spares and service parts are included in the spares and service parts list enclosed with the device; alternatively, they will be published by the local service organizations on request.

9. Return, Damaged/ Missing of Products and Restocking Fees.

9.1. Returned Products. Notwithstanding anything to the contrary in Section 8, which is captioned, "Warranty", and subject to the limitations expressly set forth herein, Buyer may return Products to Seller and receive a refund of the Purchase Price. Products must be returned within 30 days of receipt. Products shall not be returned to Seller without Seller's written return authorization. A valid Return Material Authorization (RMA) number must be obtained from Seller before returning products for any reason. Seller can refuse receipt of Products returned without Seller's written permission and/or a RMA number. All authorized returns must be returned in their original packaging and must be in new/unused condition. Transportation charges are to be prepaid. Full credit will not be issued for Products returned without Seller's previous written consent. An RMA number is valid for 10 days and any Products returned pursuant to an RMA number must be received by Seller within such 10 day period.

Please note the following are non-returnable items: any part which is a service part, a product that is uniquely configured (non-standard us voltage, neoplastic glass coating, etc.) and/or customized, discontinued or products purchased on a special order basis are not returnable.



9.2. Restocking Fee. A restocking fee ("Restocking Fee") equal to 25% of the Purchase Price paid or payable by Buyer to Seller for a Product will be charged to Buyer if such Product is returned to Seller for any reason other than a breach of the warranty set forth in Section 8.1 of these Terms and Conditions. The Restocking Fee is payable by the Buyer immediately upon return of such Product and may, in the Seller's discretion, be deducted from any refund or other amounts then payable by Seller to Buyer. In any event, all returns are subject to the prior written approval of Seller as set forth in Section 9.1 above.

10. Remedies: Damages.

10.1. Remedies. Seller shall be entitled to all remedies available at law or in equity. Seller shall also be entitled to recover its attorneys' fees and costs incurred as the result of any breach of these Terms and Conditions by Buyer. Buyer's remedies shall be limited to return of the Products and refund of the Purchase Price or repair or replacement of nonconforming Products, at Seller's option, pursuant to the terms, conditions, and limitations set forth in Section 8, which is captioned, "Warranty".

10.2. Damages and Liability. Seller's liability for damages shall not exceed the amount of the Purchase Price received by Seller from Buyer, if any, for the Product furnished that is the subject of claim or dispute. Seller shall in no event be liable for special, consequential, incidental or punitive damages. Consequential damages shall include, without limitation, loss of use, income or profit or loss of or damage to persons or property.

11. Security Agreement. For value received, Buyer hereby grants Seller a purchase money security interest in all of the Products, wherever located, and all identifiable proceeds of any of the Products. The foregoing purchase money security interest shall secure the purchase price of the Products. Upon a Default by Buyer, Seller shall have the right to remove the Products from the property of the Buyer, with or without notice, demand, and/or legal process. After repossession, Seller shall have the right to dispose of the Products in any such manner as Seller deems appropriate in its sole discretion and as set forth in the Uniform Commercial Code of the State of Delaware. Buyer shall pay all expenses incurred by Seller in the repossession of the Products, including, but not limited to, attorneys' fees, court costs, storage fees, sale costs, and repossession costs.

12. Indemnity. Buyer shall indemnify defend and hold harmless Seller, its affiliates, and their respective officers, agents and employees from and against any and all losses, liabilities and damages, including, without limitation, reasonable attorneys' fees, arising out of or in connection with (a) any alleged or actual infringement of patents, trademarks or other intellectual property rights arising out of compliance by Seller with Buyer's designs, specifications or instructions, the combination of the Products with other products, or the use or modification of the Products by Buyer; (b) a violation by Buyer of any governmental laws, rules, ordinances or regulations; (c) the negligent acts and/or omissions and/or the willful misconduct of Buyer and/or any of its officers, agents or employees; and/or (d) the breach of the provisions of these Terms and Conditions, any quotation and/or other agreement between Buyer and Seller with respect to the purchase and sale of Products.

13. Intellectual Property. The sale and delivery of the Products to Buyer shall in no way transfer to Buyer any right of ownership in any patents, copyrights, trademarks, technologies, designs, specifications, drawings or other intellectual property incorporated into the Products.

14. Consent to Jurisdiction. Buyer irrevocably consents to the exclusive jurisdiction and venue of the courts of Delaware, U.S.A. or in the United States District Court for the District of Delaware for all matters arising out of or relating to the sale of Products hereunder.
15. Governing Law. These Terms and Conditions shall be governed by the laws of the State of Delaware, without regard to conflict of laws principles.
16. Severability. If any part of these Terms and Conditions is held void or unenforceable, such part, to the extent void or enforceable will be treated as severable, leaving valid the remainder of the Terms and Conditions which shall be deemed revised so as to remain enforceable to the greatest extent possible.
17. Headings. Headings used herein are for the convenience of reference and are not intended to limit or modify the express terms hereof.
18. Integration. The terms of the agreement by and between Buyer and Seller shall be limited to these Terms and Conditions and the quotation submitted by Seller, if any. These Terms and Conditions and the quotation submitted by Seller, if any, shall supersede all prior agreements and understandings, whether written or oral, among the parties with respect to the Products.



19. Installation.

19.1. Where Seller has agreed to install or commission the goods, an additional charge consisting of normal Seller labor and travel rates may be made by Seller if Seller is prevented from carrying out such installation or commissioning for more than 30 days after delivery of the goods unless due to the act or omission of Seller.

19.2. Buyer warrants that it will at all times provide a safe working environment for Seller's employees, agents or sub-contractors and will comply with all statutory or other regulations in connection therewith and will indemnify Seller with respect to any loss incurred by Seller due to Buyer's breach of this warranty.

19.3. Seller reserves the right to sub-contract the installation of the goods or the performance of any other services required.

19.4. All goods remaining the property of Seller and delivered on site shall be the responsibility of Buyer until Seller has removed the same. Buyer warrants that it has sufficient insurance coverage to comply with the provision of this sub-clause.

20. Customer Data. Buyer agrees that Seller is entitled to use, process, and store, and allow a third party to use, process, and store on Seller's behalf, any data that Seller obtains under these Terms and Conditions, in accordance with relevant laws.

21. Waiver of Jury Trial. **BUYER HEREBY AGREES TO WAIVE ITS RIGHT TO A JURY TRIAL FOR ANY CLAIMS AGAINST SELLER. BUYER UNDERSTANDS THAT BY ACCEPTING THESE TERMS AND CONDITIONS, BUYER MAY BE SACRIFICING LEGAL RIGHTS.**