

## 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 accepted by Seller in writing.

2. Orders; Delivery. Orders shall be subject to acceptance by Seller in writing, provided the Seller may accept any order by delivery of Products to Buyer without prior notice. Orders may not be cancelled by Buyer and deliveries may not be deferred by Buyer except with the written consent of Seller. Delivery schedules are approximate and are subject to change based on conditions at the time upon. In no event shall Seller be liable in any way for any failure to ship any Products by the agreed upon delivery date where such failure is caused by acts of God, fire, floods, war, terrorism, embargoes, labor disputes, strikes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or involuntary compliance with any governmental act, regulation or request, shortage of labor, materials or manufacturing facilities, or any other cause or causes beyond Seller's reasonable control. In such event, Seller may extend delivery schedules or may, at its option, cancel Buyer's purchase order in full or in part without liability other than to return any deposit or prepayment which is unearned by reason of the cancellation. In the event Seller is unable for any reason to meet the demands of its customers (including Buyer) in respect of 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.

3. 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 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.

4. Prices; Terms of Payment.

4.1. 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. 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 U.S. Dollars.

4.2. Taxes. Prices do 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.

4.3. 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.

4.4. Minimum Order Amount. The minimum order amount is \$25 excluding all transportation, handling, insurance, packaging charges and applicable fees. Buyer agrees any order below \$25 US Dollars will be grossed up to the Minimum Order Amount.

5. Default, Acceleration and Stoppage in Transit.

5.1. Default. Non-payment of an invoice when due will be considered a "Default."

5.2. 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.

5.3. 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

6. Warranty.

6.1. 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 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 at Seller's service center in New Castle, Delaware. Seller may, in Seller's sole discretion, provide on-site warranty service at Buyer's location (if requested by Buyer) for a service fee payable by Buyer to Seller. The amount of any such service fee shall be determined by Seller. Upon receipt of a Return Material Authorization issued by Seller with respect to an allegedly defective Product (as described in Section 6.4 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 6.1 has been breached with respect to such Product, Seller will 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 6.1 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

6.2. Period. Except as provided below, the warranty set forth in Section 6.1 shall remain in force for a period of 2 (two) years from the date of shipment of a given Product and the warranty shall expire upon the expiration of such two (2) year period. All warranty claims must be made in writing to Seller by Buyer prior to the expiration of such two (2) year period. Seller shall have no obligation to Buyer with respect to any warranty claims made after such two (2) 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 made in writing to Seller by Buyer prior to the expiration of such



ninety (90) day period. Seller shall have no obligation to Buyer with respect to any warranty claims made with respect to such Products after such ninety (90) day period.

6.3. Lab Scale Evaporators. Lab Scale evaporator warranty shall remain in force for a period of (2) years. The warranty provided herein shall not cover consumable items such as wetted parts, glassware, item intended for consumption or replacement on a routine basis, or moving/rotating parts. Unless detailed in 6.3, all other items from Section 6.1 and 6.2 are applicable.

6.4. 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. 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.

## 7. Return, Damaged/ Missing of Products and Restocking Fees.

7.1. Returned Products. 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. Any and all claims for missing and/or damaged items must be Received by seller in writing within 30 days of shipment.

PLEASE NOTE; PRODUCTS THAT ARE UNIQUELY CONFIGURED (NON US VOLTAGE, NON-PLASTIC GLASS COATING, ETC.) AND/OR CUSTOMIZED, DISCONTINUED OR PURCHASED ON A SPECIAL ORDER BASIS IS NOT BEING RETURNABLE.

7.2 Damaged/Missing Shipments. Please inspect your shipment upon receipt. If any external damage is noticed, accept the shipment only after the driver has noted the damage on both his and your copies of the delivery receipt and you have requested an inspection by the carrier. Keep all containers and packing material for inspection. If, upon opening a shipment, you find damage, you must request inspection by the carrier within 15 days of delivery or you will relinquish your right to make a claim. BUCHI Corporation reserves the right to repair a damaged product, where applicable, before replacement or credit is determined. You must notify the Seller in writing within 48 hours of receipt of any items missing and/or damaged upon receipt. Shipments must be inspected upon arrival and all claims should be submitted to seller upon required inspection.

7.3 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 6.1 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 7.1 above.

## 8. Remedies: Damages.

8.1. Remedies. Seller shall be entitled to all remedies available at law or in equity. 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.

8.2. Damages and Liability. SELLER'S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE



PAYMENT, IF ANY, RECEIVED BY SELLER FROM BUYER FOR THE PRODUCT FURNISHED WHICH 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.

9. 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 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 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.



10. 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.

11. Governing Law. These Terms and Conditions shall be governed by the laws of the State of Delaware, without regard to conflict of laws principles.

12. 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.

13. Headings. Headings used herein are for the convenience of reference and are not intended to limit or modify the express terms hereof.

14. Installation.

14.1. Where the Company has agreed to install or commission the goods, an additional charge consisting of normal Company labor and travel rates may be made by the Company if the Company 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 the Company.

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

14.3. The Company reserves the right to sub-contract the installation of the goods or the performance of any other services required under the Contract.

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

15. Trade Mark Names. The Customer will be fully responsible for any consequences of the patent, trademark, service mark, design or copyright infringement of the third party right resulting from the Customer's use of sale of any of the goods where they have been modified by the Customer and the Customer shall fully and completely indemnify the company for all damages, costs, charges and expenses as a result of any such infringement or alleged infringement.