

General Terms and Conditions of Sale

1. Offer and Acceptance

A quotation confirms that Choice Analytical, Inc. or its affiliates (“CHOICE”) will sell goods (“Products”), and/or perform services (“Services”), at the prices and on the terms and conditions quoted, to the “Customer.” Acceptance of any CHOICE proposal or quotation referring to these terms, or to which these terms are attached, is limited to acceptance of the exact terms as stated herein and in said proposal or quotation. “Acceptance” may be affected by any customary means including issuance of a responsive purchase order or equivalent authorization. Any different or additional terms shall be deemed objected to without effect unless subsequently agreed to in writing by CHOICE. The receipt of these terms by a Customer following an order not in response to, or inconsistent with, a written CHOICE proposal or quotation, shall be deemed a notification of objection to all inconsistent terms in that order. CHOICE reserves the right to change or modify the design and construction of its products and to substitute other suitable material.

2. Expiration.

Quotations are valid for 90 days.

3. Prices.

The prices in a quotation shall govern Customer’s purchase of the Products and Services. Any CHOICE catalogs or other advertising materials are maintained only as a source of general information, and any prices and/or specifications shown therein are subject to confirmation by specific quotations. Customer shall bear all taxes, including excise and/or sales taxes and/or value-added taxes (“Taxes”) with respect to the Products or Services that may be imposed by any statute, ordinance or regulation.

4. Taxes and Cost of Shipping.

Any sales, use, excise or other similar type taxes imposed on this sale or on this transaction and/or shipping costs are not included in the price for the product. CHOICE will accept a valid exemption certificate from the Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and CHOICE is required to pay the tax

covered by such exemption certificate. Buyer agrees to reimburse CHOICE for the taxes paid within ten (10) days of delivery of the products.

5. Terms of Payment

Choice may require partial or full payment ARO. To the extent that CHOICE extends any credit, payments shall be made in the lawful currency of U.S.A., and drawn from a U.S.A. bank (or by wire transfer or irrevocable and confirmed Letter of Credit), within 30 days of CHOICE' invoice date (unless otherwise noted), and subject to a monthly 1.5% late payment assessment CHOICE reserves the right to invoice for partial shipments.

Choice accepts corporate credit cards. A 3.5% surcharge will be assessed when payment is received via credit card.

6. Delivery and Risk of Loss

Terms of Product delivery shall be Ex Works" at the point of shipment (unless otherwise noted). All delivery, insurance, and transportation of the Products are at the Customer's risk and pursuant to Customer's discretion and account. The risk of loss or damage to the Products shall pass to the Customer at the time of shipment. Upon the request of the Customer, CHOICE may, but is not obligated to, arrange for transport and insurance at the Customer's sole expense. Shipping dates are considered estimates only, and failure to meet said dates shall not be considered a breach by CHOICE.

7. Title and Security

Title to Products shall pass to Customer upon delivery to a common carrier. Until CHOICE has received full payment for any Products, CHOICE is entitled to a security interest in the Products which shall upon CHOICE request, and with the assistance of Customer, be created and remain with CHOICE. Until the security interest is extinguished, CHOICE may stop shipment of, repossess and/or resell any Products in question.

8. Inspection and Rejection

Customer shall have no longer than thirty (30) days following receipt of a shipment of Products to inspect the Products. Customer may reject Products or Product shipments, in whole or in part, where the inspection reveals the

Products are damaged, or are materially defective in workmanship or material. If Customer fails to timely reject Products or places the Products into commercial use, the Products shall be deemed accepted. Warranty. CHOICE warrants to Customer that the Products will be free from material defects in material and workmanship for a period of twelve (12) months from the date of delivery. This warranty is void and does not apply to Products that have been subject to abuse, misuse, neglect, accident, impact such as dropping, tampering, modification, unauthorized repair, improper installation, if the Products have been used for purposes not authorized by CHOICE or other causes unrelated to defective materials or workmanship. CHOICE shall make the final determination as to the existence and cause of any alleged defect.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, CHOICE HEREBY DISCLAIMS AND MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CHOICE' SOLE LIABILITY SHALL BE LIMITED, AT CHOICE' SOLE OPTION, TO THE REMEDY PROVIDED HEREIN.

Without limiting the generality of the foregoing, Customer acknowledges that the warranty set forth in this paragraph supersedes all prior agreements and discussions with respect to the quality and performance of the Products and Services.

9. Remedy

If any Product proves to be in breach of the foregoing warranty, Customer must notify CHOICE in writing not later than the 30th day following the end of the warranty period. CHOICE will promptly issue a return authorization for such Product. AS THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, CHOICE SHALL, AT ITS OPTION, EITHER REPAIR, REPLACE OR MODIFY THE PRODUCT. Customer shall be responsible for removing any defective parts in the Products and installing any repaired or replacement parts provided hereunder.

10. Limitation of Liability

IN NO EVENT SHALL CHOICE BE LIABLE FOR ANY PENALTY OR ANY DAMAGES TO THE CUSTOMER, ITS CUSTOMERS, AGENTS OR ANY THIRD PARTY WITH RESPECT TO ANY LOSS OF PRODUCTION, LOSS OF USE, LOSS OF OTHER GOODS, LOSS OF ORDERS, LOSS OF PROFITS, SUBSTITUTION COSTS, LOSS OF REVENUES, DOWN-TIME COSTS OR ANY COSTS ASSOCIATED WITH THE FAILURE OF THE

PRODUCTS OR SERVICES AND/OR THE REMOVAL OF PRODUCTS FROM SERVICE, OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, TORT, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, REGARDLESS OF THE CAUSE OR THE LEGAL THEORY THEREFOR, INCLUDING LATE DELIVERY. CHOICE' LIABILITY, IF ANY, IS LIMITED TO THE ABOVE WARRANTY, AND PAYMENT RECEIVED FROM THE CUSTOMER FOR THE PRODUCTS IN QUESTION. This exclusion also includes any liability which may arise out of third party claims against Customer. CHOICE assumes no obligations or liability of any kind with respect to infringements or alleged infringements of United States or foreign patents, copyrights, trademarks, or other proprietary rights arising out of Customer's purchase, use, or possession of CHOICE' Products.

11>Returns

No Products may be returned, unless authorized by CHOICE, and CHOICE shall not be liable for any Products returned without such authorization. Customer shall be responsible for the transportation charges and losses of such Products returned. Any Products wrongfully returned, but accepted by CHOICE, shall be subject to a restocking charge of twenty-five percent (25%) of the invoice or purchase order amount plus any transportation costs incurred by CHOICE. Customer shall carefully pack any returned Product in order that same may reach CHOICE without damage. Products shall be returned only to those locations stipulated to by CHOICE at the time that CHOICE consents to the return of such Products. The shipping container for all returned Products must be adequate to ensure safe delivery of Products to CHOICE.

12.Default and Cancellation

In the event of Customer's default in payment for Products purchased hereunder, Customer shall be responsible for all reasonable costs and expenses incurred by CHOICE in collection of any sums owing by Customer (including reasonable attorney's fees), and CHOICE may decline to make further shipments to Customer without in any way affecting its rights under this contract. If, despite any such breach by Customer, CHOICE elects to continue to make shipments, such shipments shall not constitute a waiver of any breach by Customer or in any way affect CHOICE's legal remedies arising from such breach.

13.Software License Grant and Limitations

Any Customer of a software Product offered by CHOICE is granted a limited, non-

exclusive, non-transferable, and non-sublicensable license to use a single instance of the software Product in connection with a single CHOICE analyzer. CHOICE retains title to and ownership of and all proprietary rights with respect to such software Products and all copies and portions thereof, whether or not incorporated into or with other software. This License does NOT constitute a sale of the software Products or any portion or copy thereof. Customer acknowledges that the software created by CHOICE and all accompanying documentation and specifications constitute valuable proprietary, confidential, and trade secret information of CHOICE. Such software, documentation and specifications may not be copied or sub-licensed, in whole or in part, provided, transferred, or otherwise disclosed or made available to third parties without the express written consent of CHOICE. Title and ownership of the software created by CHOICE shall at all times remain with CHOICE. Notwithstanding the foregoing, the Products are offered for sale and are sold by CHOICE subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which CHOICE can grant licenses covering complete equipment, or any assembly, circuit combination, method or process in which any such Products are used as components. CHOICE expressly reserves all its rights under such patent claims. CHOICE may revoke this license upon the breach of any of its terms or upon misuse of the license or the software.

14. Proprietary Rights

All CHOICE contributions to the Products and Services, the results of the Services, and any other work product designed or provided by CHOICE hereunder may contain or result in statutory and non-statutory Intellectual Property, including but not limited to patentable subject matter or trade secrets; and all such Intellectual Property remains the sole property of CHOICE; and Customer shall not disclose (except to the extent inherently necessary during any resale of Product sold hereunder), disassemble, decompile, or otherwise reverse engineer said contributions, or any results of the Services, or any work product, or otherwise attempt to learn the underlying processes, source code, structure, algorithms, or ideas.

15. Compliance with Laws

Unless otherwise specified, Customer is responsible for obtaining any required export or import licenses. Customer will comply with all laws and regulations

applicable to the installation, use, or export and import of all Products, including applicable export control laws and regulations of the U.S., E.U., and any other country having proper jurisdiction and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer, and use of all Products and technology delivered hereunder. Customer will not sell, transfer, export, or re-export any CHOICE products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical, or biological weapons or missiles, nor use CHOICE Products or technology in any facility which engages in activities relating to such weapons.

Customer will comply with anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Customer's business activities, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA").

Customer agrees that no payment of money or provision of anything of value will be offered, promised, paid, or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Customer or for CHOICE, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Customer's activities.

16. Notices

Any notice contemplated by or made pursuant to this contract shall be in writing.

17. Modification/Waiver

These terms incorporate and/or replace all prior terms whether oral or written, and may not be changed by either party except by a writing signed by both parties. The failure by CHOICE to enforce at any time any of the provisions of this contract, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provision or option, nor in any way affect the validity of this contract (or any part hereof), or the right of CHOICE thereafter to enforce each and every such provision. If any provision hereof is held by a court of competent jurisdiction to be unenforceable the remaining terms and provisions shall be unaffected and remain in full force and effect.

18. Assignment

This agreement shall bind and inure to the benefit of CHOICE' successors and assigns, including without limitation, any entity into which CHOICE shall merge or consolidate. Customer may not assign any of Customer's rights or obligations under this agreement without CHOICE's prior written consent. Any attempted assignment, delegation, or transfer by Customer without such consent of CHOICE shall be void.

19. Force Majeure

CHOICE will exercise reasonable efforts to fill all orders according to the agreed schedule(s); provided, however, that CHOICE shall not be responsible for any damages or delays caused by acts of God, acts of civil or military authorities, fires, strikes, floods, epidemics, quarantines, restrictions of government, war, riots, transportation delays, obtaining necessary engineering talent, labor, materials or manufacturing facilities, or any other cause beyond its reasonable control. In the event of any such delay, the delivery date shall be extended for such length of time as may be reasonably necessary.

20. Miscellaneous

All rights of the parties with respect to any sale covered hereby shall be governed by the substantive law of the State of Texas as applied to agreements among Texas residents entered into in Texas. In no event shall any provisions of the United Nations Convention on Contracts for the International Sale of Goods govern the terms of the same contemplated hereby. The Customer irrevocably submits to the exclusive jurisdiction and venue of any state or federal court having within its jurisdiction CHOICE's place of business.

The laws of the State of Texas in the United States of America shall govern this agreement and performance under this agreement. Any dispute under this agreement shall only be brought in the state court of Texas. The parties hereto agree that venue shall be in Galveston, Galveston County, Texas, for any and all claims or disputes arising out of all transactions between CHOICE and Buyer. Buyer voluntarily agrees that Galveston, Galveston County, Texas is the most convenient forum and understands the choice of forum is an integral and vital part of

CHOICE's agreement to sell to Buyer. By agreeing to venue in Galveston, Galveston County, Texas, Buyer fully intends to waive its rights, if any, to venue in any place other than Galveston, Galveston County, Texas. The parties deem that this agreement is performable in Galveston, Galveston County, Texas whether or not any part of the agreement is actually performed in Galveston, Galveston County, Texas. In addition, Buyer agrees that CHOICE's prices reflect an analysis of the elimination of uncertainty regarding the jurisdiction for any dispute. Buyer expressly waives the application of the United Nations Convention on Contracts and Convention on the Limitation Period for the International Sale of Goods.

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