



### Method of Invoicing

Email (preferred method) \_\_\_\_\_ to email address: \_\_\_\_\_

Regular mail \_\_\_\_\_

Tax exempt: \_\_\_\_\_ (please provide certificate)

### Method of Payment

Wire transfer/EFT (preferred method) \_\_\_\_\_ or Check \_\_\_\_\_ to Cherokee Instruments, Inc.

Branch Banking & Trust (BB&T)

Account Number: 5295651794

1405 N.Main Street

Routing Number: 53101121

Fuquay Varina, NC 27526

SWIFT Number: BRBTUS33

### Trade References

NAME	ADDRESS	PHONE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: By completing this form, the above corporation, partnership or sole proprietorship hereby authorizes Cherokee Instruments, Inc. to contact your trade and bank references for the normal credit information, as may be required.

# CHEROKEE INSTRUMENTS, INC.

## Terms and Conditions

**TERM:** The rental term begins on the date the customer receives the equipment and continues for the minimum term, and until equipment is received back at our inventory center. After the expiration of any minimum term, rentals for a fractional period shall be at the daily rate. Rental rates are based on calendar days. Monthly rates are based on 30 days. Once equipment leaves our facility we must charge the minimum term. If, however, your order cancels before we ship then no cancellation fee will apply.

**FREIGHT:** All equipment is shipped to the customer at the customer's expense using standard freight charges and F.O.B. Fuquay-Varina, North Carolina. To maintain a timely schedule, all outbound shipments are normally made using a two-day delivery service unless otherwise specified. Cherokee Instruments, Inc. reserves the right to ship via an express overnight delivery service in order to meet scheduling constraints. All returns will be made by prepaid freight to Cherokee Instruments, Inc. in Fuquay-Varina, North Carolina. Cherokee Instruments, Inc. reserves the rights to refuse any shipment sent collect without prior written authorization. Furthermore, rental term will continue until freight is returned prepaid. If Cherokee Instruments elects to receive collect freight, in addition to the return freight charges a 20% surcharge will be billed to the renter. Customer is not responsible for any costs on equipment lost in outbound shipments.

**TAXES:** Customer shall be responsible for and shall pay all taxes and other governmental charges assessed in connection with the rental use or possession of the equipment including, without limitation, any and all sales and/or use taxes, personal property taxes, any duties, value added taxes and goods and services taxes (other than taxes on Cherokee Instruments, Inc.'s net income.)

**PAYMENT TERMS:** All invoices are marked Net Due 30 days. Any invoice not paid in full 30 days from date of invoice will be subject to a 1.5% late charge per month. No equipment will ship to any client whose account is 60 days over due. Clients who are regularly late on payments will be placed on C.O.D. status.

**CYLINDER GAS USAGE:** Rental rates for cylinder gases are based on the client using 400 psig of gas per 5-day rental, 500 psig of gas per 10-day rental, and 1250 psig of gas per month, or less. Gas usage in excess of 400/500/1250 psig per 5/10/30-day rental will be subject to additional gas charges, which will be an additional \$15.00 for each additional 50 psig or fraction usage.

**CHEROKEE INSTRUMENT RENTAL WARRANTY:** Cherokee Instruments, Inc. warrants that the equipment in normal use will meet the manufacturer's operating specifications. **If any equipment shall require repair on re-calibration, customer shall immediately notify Cherokee Instruments, Inc. and obtain consent before any remedial action is taken or any equipment is returned.** The sole obligation of Cherokee Instruments, Inc. under the foregoing warranty shall be to repair, re-calibrate, or at its option, replace any equipment that shall fail to meet said warranty at its expense; and the right to receive such repairs, re-calibration or replacement shall constitute the sole and exclusive remedy of customer. Equipment damaged in outbound shipment may, at customer's option, be returned to Cherokee Instruments at no cost to the customer, providing notification of damage is provided to shipment carrier upon receipt of damaged equipment.

The foregoing warranty shall not apply to any damage to equipment caused by accident, misuse or abuse, and Cherokee Instruments, Inc. shall not be responsible for any delays or failures in making repairs, re-calibration or replacement due to unavailability of part, of labor, strikes, and delays in transportation or other causes beyond its reasonable control. Cherokee Instruments, Inc., **NOT BEING THE MANUFACTURER OF ANY EQUIPMENT, DISCLAIMS ALL OTHER LIMITATION, ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT OR THAT THE EQUIPMENT WILL NOT INFRINGE UPON ANY PATENT OR PROPRIETARY RIGHT OF ANY THIRD PARTY.** Unless customer gives Cherokee Instruments, Inc. notice of any defect within 48 hours after receipt of each item of equipment, it shall be conclusively presumed that such item of equipment was delivered in good condition and repair.

**USE OF EQUIPMENT:** Customer shall use the equipment in a careful and proper manner in compliance with all laws and other governmental requirements and the manufacturer's instruction and specifications, and shall keep the equipment free from all liens and encumbrances. Except upon the prior written consent of Cherokee Instruments, Inc., customer shall not (1) assign or sublet the equipment or (2) allow any alterations, modifications or repairs of any equipment by anyone other than Cherokee Instruments, Inc. Customer shall bear the entire risk of loss or damage to the equipment from any cause, and shall indemnify and hold Cherokee Instruments, Inc.

harmless from any and all claims, liabilities, losses, costs and expenses (including attorney's fees) arising out of the use, possession, operation or renting of the equipment.

**LIMITATION OF LIABILITY:** In no event, whether as a result of breach of contract or warranty, tort (including negligence) or otherwise, shall Cherokee Instruments, Inc. be liable for any consequential, incidental or exemplary damages, including, without limitation, any loss of profit or revenues, loss of use of any equipment or any other equipment, damage to other equipment, cost of substitute equipment or downtime costs.

**RETURN OF EQUIPMENT:** Upon termination of the rental period, customer shall forthwith return the equipment to Cherokee Instruments, Inc., Fuquay-Varina, North Carolina in the same condition as when first received; ordinary wear and tear accepted.

Customer shall be responsible for and pay to Cherokee Instruments, Inc. on demand the new replacement cost of any lost or materially damaged equipment (including any manuals, cables and other accessories) as well as cost of restoring any equipment returned with extraordinary wear and tear or minor damage. Customer shall properly pack in original boxes using original packing materials for shipment all equipment being returned and shall be responsible for any damage caused during the return shipment. With respect to lost or materially damaged equipment, customer shall be responsible for rentals to the date of receipt by Cherokee Instruments, Inc. and the full new replacement cost. To limit Customer liability, Customer should fully insure equipment for replacement value when being returned to Cherokee Instruments, Inc.

**DEFAULT AND REMEDIES:** Customer shall be in default hereunder if it shall fail to pay, when due, any sum due to Cherokee Instruments, Inc. or shall fail to perform any other obligation owing to Cherokee Instruments, Inc. or if any bankruptcy or similar proceedings under federal or state law shall be filled by or against customer. Upon the occurrence of any such default Cherokee Instruments, Inc. may at any time during the continuance thereof, and in addition to all other rights and remedies available to herein, at law and inequity, (1) terminate the rental of all equipment rented to customer, (2) require customer to assemble and return all such equipment, or repossess all such equipment, and/or (3) recover from customer all amounts payable hereunder. Cherokee Instruments, Inc. shall not have any duty to account to customer for the proceeds of any disposition of equipment subsequent to return or repossession. All rights and remedies of Cherokee Instruments, Inc. on default are cumulative and may be exercised simultaneously or successively. No waiver of any default shall waive any other or subsequent default. Customers shall reimburse Cherokee Instruments, Inc. for all costs and expenses incurred by Cherokee Instruments, Inc. in enforcing its rights hereunder, including attorney's fees.

**RENTAL RATES:** The rental rate is based upon the minimum term and rate agreed upon prior to the start of the rental term. Customer shall not have the right to cancel the rental of the equipment prior to the expiration of said minimum term, customer shall forthwith upon demand pay to Cherokee Instruments, Inc. an amount (plus applicable taxes) equal to the difference between (1) the aggregate rentals that would have been charged by Cherokee Instruments, Inc., using rental rate specified in its agreement, for and during the period actually rented by the customer, and (2) the aggregate rentals actually paid by customer with respect to such period.

**MISCELLANEOUS:** If there is a minimum term specified, then the rental rate is fixed for said minimum term. If, however, no minimum term is specified, or upon the expiration of the minimum term, all rental rates and prices shall be subject to change by Cherokee Instruments, Inc. at any time without notice. Rental of all equipment is subject to availability in Cherokee Instruments, Inc. inventory. If any of these terms and conditions is found to be invalid, it shall not affect the validity of any other terms and conditions. The laws of the State of North Carolina shall govern the rights of Cherokee Instruments, Inc. and the customer.

**SOLE AGREEMENT:** The above terms and conditions are the only terms and conditions upon which Cherokee Instruments, Inc. is willing to rent the equipment. Any additional or different terms in any order or other response by Customer shall be deemed objected to by Cherokee Instruments, Inc. Rental without need of further notice of objection, and shall be of no effect or in any way binding upon Cherokee Instruments, Inc. No waiver, alteration or modification of any of the provisions hereof shall in any event be effective or binding upon Cherokee Instruments, Inc. unless in writing and signed by a duly authorized employee of Cherokee Instruments, Inc.

Effective June 1, 2007

### *Acknowledgment of and Agreement to Above Terms and Conditions*

Company Name: \_\_\_\_\_

Authorized Person (Print/Sign): \_\_\_\_\_ / \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_