

## SERVICE TERMS AND CONDITIONS (For Canada only)

**1. Agreement.** These Service Terms and Conditions, together with any other document(s) that Mar Cor Purification ("Mar Cor") has attached hereto or executed that specifically reference these Service Terms and Conditions (such as a Purchase Order Confirmation, Quotation, Proposal, Standing Order, or Credit Application) (collectively, "Agreement") constitute the entire binding agreement between Mar Cor and you ("Buyer") regarding the purchase of services from Mar Cor ("Services") and supersede all other agreements and understandings, whether written or oral, between the parties. Notwithstanding anything to the contrary, whether executing a Purchase Order, Quotation, Proposal, or Standing Order or by accepting the provision of the Services, Buyer agrees to be bound by and accept the terms and conditions contained in this Agreement. No additions, conditions, amendments, alterations, or modifications by Buyer or any other person, whether oral or contained in any other documents submitted from Buyer to Mar Cor will be binding on Mar Cor, regardless of Mar Cor's failure to object or Mar Cor's provision of Services, unless otherwise agreed to in writing and signed by Mar Cor. These terms and conditions may be updated or amended from time to time by Mar Cor, a copy of which will be available for review at <http://www.mcpur.com/CanadianServiceT&C.pdf>. THIS AGREEMENT WILL APPLY UNLESS BUYER HAS A SEPARATE WRITTEN AGREEMENT WITH MAR COR THAT EXPRESSLY REPLACES THIS AGREEMENT.

**2. Price.** The prices for the Services and any spare parts or other products supplied by Mar Cor ("Products") are the prices quoted by Mar Cor in writing or, if none are quoted, the prices set out in Mar Cor's published price lists from time to time. All prices are subject to change without notice. Fuel surcharges will apply to all Service visits and are subject to change from time to time. All prices exclude applicable goods and services tax (GST), harmonized sales tax (HST), and Quebec sales tax (QST), which will be the responsibility of Buyer and unless Buyer is exempt therefrom and Mar Cor has received proper documentation therefor, such taxes will be added to the price of the Services or billed separately to Buyer where Mar Cor has the legal obligation to collect the taxes. Buyer must provide Mar Cor with a resale/exemption certificate in order to avoid the withholding of applicable taxes. No refund or adjustment to previously withheld taxes will be made by Mar Cor more than sixty (60) days after the invoice date. Proof of certification should be mailed to Mar Cor, Attention: Credit and Collection Department.

**3. Payment Terms.** Payment may be made by credit card (at the time of order) or on open account (subject to credit approval). Provided that Buyer meets Mar Cor's credit requirements, payment will be due net thirty (30) days after the date of Mar Cor's invoice, unless otherwise agreed in writing. All payments must be made in Canadian Dollars or the invoiced currency. Mar Cor reserves the right to charge at any time a monthly service charge of one percent (1%) or the highest rate allowed by law, whichever is lower, on accounts that are not paid when due, effective as of the first day after the due date. If Buyer fails to fulfill the terms of payment or does not meet Mar Cor's continuing credit requirements, Mar Cor will have the option to do one or more of the following: (i) decline to accept orders or fulfill pending orders; (ii) require all pending and future orders to be on a prepaid basis; (iii) delay any service or shipment of Products until payment is received by Mar Cor or further assurances asked for by Mar Cor are received; or (iv) declare all outstanding sums immediately due and payable. Nothing contained herein will release Buyer from any previous obligation. Buyer will be liable to Mar Cor for all costs incurred by Mar Cor in its collection of any amounts owing by Buyer which are not paid when due, including collection agencies' and attorneys' fees and expenses, regardless of whether a lawsuit is commenced. All orders are subject to current credit approval. From time to time, Mar Cor may review Buyer's creditworthiness. Buyer agrees to provide Mar Cor with all credit information reasonably requested, and Buyer represents and warrants to Mar Cor that all information Buyer has provided is true and correct.

**4. Force Majeure.** Neither party assume liability or will be liable to the other party for any failure or any delay in fulfilling its obligations hereunder caused, in whole or in part, directly or indirectly, by fires, natural disasters, strikes, shortages of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargoes, government orders or directives, terrorist activities, or any other circumstance beyond the reasonable control of such party. Mar Cor may at its option suspend deliveries while such event or circumstance continues, apportion available inventory between its customers as it determines, or terminate this Agreement with immediate effect by written notice to Buyer.

**5. Delivery Terms; Title.** Unless otherwise agreed by Mar Cor in writing, all shipments will be delivered by Mar Cor FOB origin. Title to and risk of loss or damage for all Products will pass to Buyer upon Mar Cor's delivery of the Products to the carrier. Buyer must inspect delivered Products and report claims for defects, damages, or shortages which are discoverable on a visual inspection in writing within ten (10) days of delivery or the Products will be deemed irrevocably accepted and such claims will be deemed waived. In all cases of damage and/or loss to Products in transit, Buyer will be responsible for making claim(s) against the carrier; provided, however, that Mar Cor will provide reasonable assistance with damage and/or loss claims. Loss or damage will not relieve Buyer of any obligations for payment or obligations in this Agreement. Delivery dates provided by Mar Cor are estimates only. Shipping, freight, handling, delivery, and insurance charges are the sole responsibility of Buyer and will be "pre-paid and add" or otherwise invoiced to Buyer.

**6. Changes.** After acceptance by Mar Cor, Buyer's order will not be subject to cancellation or reduction in the scope of Services without Mar Cor's written consent. Any other changes to an order requested by Buyer will require the prior written approval of Mar Cor, which approval may be subject to price adjustments as determined on a case-by-case basis. Notwithstanding the foregoing, either party may terminate the Services, with or without cause, upon not less than ninety (90) days' prior written notice to the other party. Termination of the Services will not relieve Buyer of its obligation to pay for all Services performed by Mar Cor and Products supplied to Buyer on or prior to the date of such termination. If Buyer terminates the Services for any reason other than Mar Cor's breach, Buyer will also pay Mar Cor a cancellation fee equal to twenty percent (20%) of the amount that would be due for Services not yet performed, but cancelled hereunder.

**7. Regulatory Disclaimer.** Although Mar Cor has required registrations, approvals and licenses for all or substantially all of its systems, the purchase of parts and system components from Mar Cor does not provide compliance under Health Canada or any other law, rule or regulation for Buyer's system.

### **8. Limited Warranties; Limitation of Warranties.**

Mar Cor warrants to Buyer that Services provided by Mar Cor will be performed with reasonable skill and care. The warranty period for Services is ninety (90) days from performance of service.

**Non-Mar Cor Products.** Any Products not manufactured by Mar Cor will carry the original manufacturer's warranty, copies of which are available on request. Unless otherwise advised, Mar Cor will permit Buyer to submit warranty claims regarding such Products to Mar Cor, which will then proceed against the original manufacturer on behalf of Buyer in accordance with such manufacturer's warranty policy. However, Mar Cor takes no responsibility for enforcing such warranty. MAR COR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT NOT MANUFACTURED BY MAR COR.

**Mar Cor Products.** Mar Cor warrants to Buyer that Products manufactured by Mar Cor that are sold to Buyer will be free from defects in material and workmanship under normal use and service at the time of shipment from Mar Cor. The warranty period for Products (other than parts) shipped by Mar Cor without any installation by Mar Cor is one (1) year. The warranty period for Products (other than parts) installed at a customer site by Mar Cor is the lesser of one (1) year from the date of installation or fifteen (15) months from the date of shipment. The warranty period for spare and replacement parts is ninety (90) days from the date of shipment or, if installed by Mar Cor, the lesser of ninety (90) days from the date of installation or one hundred eighty (180) days from the date of shipment.

Mar Cor will have no warranty obligation whatsoever with respect to any damage caused by or associated with: (i) external causes, including, without limitation, accident, vandalism, natural disaster, acts-of-God, power failure, or electric power surges; (ii) abuse, misuse, or neglect of the Product or use of unauthorized third party consumables and accessories; (iii) usage not in accordance with Product instructions; (iv) failure to perform required preventive maintenance; or (v) servicing or repair not authorized by Mar Cor. The limited warranty furnished hereunder does not extend to damage to items purchased hereunder (i) resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by Mar Cor, or (ii) caused by

improper use or installation, or improper thermal or electrical capacity. In addition, the limited warranty is conditioned upon proper storage, installation, use and maintenance of the Product in accordance with applicable written recommendations of Mar Cor.

Notice of a defective Product or Service must be given to Mar Cor in writing within ten (10) days following the discovery of such defect. Mar Cor's SOLE LIABILITY under the warranty will be, at Mar Cor's option, to either (i) replace or repair the defective Product(s) or re-perform the Service or (ii) refund or credit the purchase price of such defective Product(s) or the price paid for such Service to Buyer.

MAR COR'S LIMITED WARRANTY HEREUNDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY MAR COR AND MAR COR DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE, AND MAR COR DOES NOT REPRESENT OR WARRANT THAT ANY PRODUCT OR SERVICE WILL MEET BUYER'S REQUIREMENTS. Any oral or written statement concerning the Products or Services inconsistent with the limited warranty set forth above will be of no force or effect.

Buyer will be responsible for reimbursement of Mar Cor's reasonable travel and other expenses incurred in providing on-site warranty and out of warranty services.

**9. Limitation of Actions.** Any actions or claims by Buyer regarding the Services must be brought within twelve (12) months after the date the Services were performed by Mar Cor. However, any billing disputes must be made within one (1) month of the applicable invoice date or will be deemed to be waived.

**10. Returns.** All returns are subject to Mar Cor's Returned Material Authorization Policy.

**11. Trademarks; Copyrights.** Buyer may not use the Mar Cor name or any Mar Cor trademark, service mark, logo, or copyrighted work for any purpose.

**12. Confidential Information.** Except for information that Buyer demonstrates was in Buyer's possession prior to receipt from Mar Cor, Buyer agrees that all information of Mar Cor, whether written or oral, that is furnished by Mar Cor to Buyer concerning the business and affairs of Mar Cor or is learned by Buyer during discussions or communications between Buyer and Mar Cor, is proprietary to Mar Cor, and Buyer will hold such information in confidence and will not use or disclose such information without Mar Cor's prior written consent, except for the fulfillment of this Agreement.

**13. Limitation of Liabilities and Remedies.**

Under no circumstances will Mar Cor or its affiliates have any liability for damage to a facility or property due to floods or leaks caused by or related to the Services or Products provided hereunder. All water systems must be protected from water hammer, have required safety relief valves, vacuum breakers and leak detectors. Floors and walls must be sealed and sloped to adequate floor drains. In addition, Buyer is responsible for meeting all federal, provincial, and local laws, rules, and regulations regarding the monitoring of supplied equipment, including ozone equipment.

UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND EACH PARTY HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING OUT OF WARRANTY OR CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS, AND RELIANCE DAMAGES. BUYER AGREES THAT UNDER NO CIRCUMSTANCES WILL MAR COR'S LIABILITY RELATING TO ITS SALE OF PRODUCTS OR PROVISION OF SERVICES TO BUYER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PARTICULAR PRODUCTS OR SERVICES INVOLVED. NOTWITHSTANDING ANYTHING IN THIS

AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT WILL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

**14. Indemnity.** To the fullest extent permitted by law, Buyer will indemnify, defend, and hold harmless Mar Cor, including Mar Cor's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") that relates to: (i) Buyer's modification of or addition to any Product(s) or misuse or abuse of the Products; (ii) Buyer's breach of this Agreement; (iii) Buyer's gross negligence or willful misconduct; or (iv) Buyer's failure to abide by all applicable laws, rules, regulations, and orders that affect the Products or Services. To the fullest extent permitted by law, Mar Cor will indemnify, defend, and hold harmless Buyer, including Buyer's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and permitted assigns, from and against any Liabilities arising out of a third party claim (i) for bodily injury to or property damage to the extent caused by a defect in a Product manufactured by Mar Cor; (ii) to the extent caused by Mar Cor's breach of this Agreement; or (iii) to the extent caused by Mar Cor's gross negligence or willful misconduct. Mar Cor is not required to indemnify Buyer to the extent that any claim arises out of Buyer's gross negligence or willful misconduct or use of a Product by any person or entity other than in accordance with Mar Cor's-approved Product labeling, including, without limitation, any restrictions on re-use of Products.

**15. Independent Contractors.** No provision of this Agreement will be deemed to create a partnership, joint venture, or other combination between Mar Cor and Buyer. Buyer and Mar Cor are independent contractors. Neither party will make any warranties or representations or assume any obligations on the other party's behalf. Neither party is or will claim to be a legal representative, partner, agent, or employee of the other party. Each party is responsible for the direction and compensation, and is liable for the actions of, its employees and subcontractors.

**16. Headings.** The section headings used herein are for convenience of reference only and do not form a part of this Agreement, and no construction or inference will be derived therefrom.

**17. Governing Law/Venue.** This Agreement, any sales hereunder, and any claim, dispute, or controversy between Buyer and Mar Cor arising from or relating to this Agreement, its interpretation, or the breach, termination, or validity thereof, will be governed by and construed in accordance with the laws of the Province of Ontario, without regard to conflicts-of-law rules. Any and all disputes arising under this Agreement will be dealt with under the exclusive jurisdiction and exclusive venue of the provincial courts located in the City of Toronto, Ontario, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.

**18. Modification and Waiver.** Except as otherwise provided in Section 1 of this Agreement, no purported amendment or modification of any provision hereof will be binding unless set forth in writing and signed by an officer of each party. No waiver of any provision hereof will be effective unless in writing and signed by an officer of the waiving party. Any waiver will be limited to the circumstance or event specifically referenced in the written waiver document and will not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. The failure of either party to enforce any provision of this Agreement at any time will not be construed to be a waiver of such provision nor of the right of such party thereafter to enforce such provision.

**19. Validity.** If any provision of this Agreement is held to be invalid or unenforceable in any respect, the remaining terms and conditions of this Agreement will remain in full force and effect as if such invalid or unenforceable provision had not been included herein.

**20. Supplemental Terms.** On custom orders and certain special orders, additional terms and conditions may apply. Such terms and conditions, if applicable, will be set forth in Mar Cor's Quotation or Service Proposal and will be deemed a part of this Agreement.

**21. Interruption/Delay.** If Buyer is not ready for Service and/or Buyer's equipment is not accessible upon arrival of Mar Cor's service technician(s), or Service is interrupted (beyond the control of Mar Cor) during a Service call, the technician(s) will leave the site and an additional charge reflecting the additional travel and labor will be assessed against Buyer.

**22. Work Hours.** Quoted prices assume Services performed during normal working hours. Any Services performed by Mar Cor outside normal working hours will be charged at standard overtime rates in effect at the time such Services are provided.

**23. Local Regulations.** If Mar Cor is required for any reason to use local union personnel of any trade, hiring and payment for the required union personnel will be the sole responsibility of, and handled by, Buyer. It will not be Mar Cor's responsibility to pay salary, benefits, or other compensation of any kind to the union.

**24. Layout Approval.** Prior to acceptance of a Service proposal, a proposed room layout and installation flow diagram may be provided to Buyer, provided that Buyer has provided a scaled drawing of its water room to Mar Cor. Upon agreement of such layout by both Mar Cor and Buyer (and fulfillment of any other pre-contract requirements), the purchase order will be accepted.

**25. Exchange Carbon and DI Tanks.** In the event (i) the Services include Carbon and/or DI Tank exchanges and (ii) Buyer is leasing such Tanks from Mar Cor:

- (a) All such Tanks remain the property of Mar Cor.
- (b) Unless otherwise agreed to by Mar Cor in writing, the Tanks will be exchanged in accordance with Mar Cor's standard exchange policy. Mar Cor's standard exchange policy provides for servicing of each Tank at least once every six months or when the quality control monitor/indicator or other form of manual testing indicates a service exchange is required.
- (c) All Tanks (except those with monthly rental fees) must not be on Buyer's site for more than six (6) months without Mar Cor's prior written approval. If Buyer does not provide a purchase order for replacement of the Tanks at or prior to the six month interval, Mar Cor will remove the Tanks with no liability to Buyer. Buyer agrees that Mar Cor has the right to enter any premises where the Tanks are located to recover such Tanks.

**26. Miscellaneous.**

- (a) Buyer is responsible for the disposal of any refuse generated during the Services.
- (b) Buyer agrees to provide site parking for Mar Cor service vehicles.