

## TERMS AND CONDITIONS OF SALE

**1. Agreement.** These Terms and Conditions of Sale, together with any other document(s) that Mar Cor Purification (“Mar Cor”) has attached hereto or executed that specifically reference these Terms and Conditions of Sale (such as a Purchase Order Confirmation, Quotation, Proposal, Standing Order, Credit Application, or Letter of Authorization) (collectively, “Agreement”) constitute the entire binding agreement between Mar Cor and you (“Buyer”) regarding the purchase, use, and/or resale of products, services, and support from Mar Cor (collectively, “Products”) and supersede all other agreements and understandings, whether written or oral, between the parties. This Agreement will apply whether Buyer is an end-user or a distributor of the Products, although certain terms and conditions herein will be applicable only to certain Buyers by its context. Notwithstanding anything to the contrary, whether executing a Purchase Order, Quotation, Proposal, Standing Order, or Letter of Authorization or by accepting delivery of the Products, 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 shipment of Products, 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/T&C.pdf>. THIS AGREEMENT WILL APPLY UNLESS BUYER HAS A SEPARATE WRITTEN AGREEMENT WITH MAR COR THAT EXPRESSLY REPLACES THIS AGREEMENT.

**2. Price.** Prices are based on standard domestic packaging and do not include the cost for special packaging or other requirements, which will be at Buyer’s expense. Firm system pricing is dependent upon receipt and analysis of feed water sample. Should the analysis dictate a change in the system, a revised quotation will be provided. All prices are subject to change without notice. All prices exclude applicable United States federal, state, and local taxes as well as any applicable foreign taxes, 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 Product 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 Purification, Attention: Credit and Collection Department.

**3. Payment Terms.** Payment may be made by credit card (at the time of order), COD, 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 U.S. 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 shipment until payment is received by Mar Cor or further assurances asked for by Mar Cor are received; (iv) declare all outstanding sums immediately due and payable; or (v) require payment for all Products delivered hereunder to be made by irrevocable letter of credit in a form approved by Mar Cor. 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 now, and each time Buyer places an order, that all information Buyer has provided is true and correct. Certain orders will be subject to progress payments, which will include an initial deposit followed by payments based on milestones specified in advance by Mar Cor.

**4. Security for Payment of Purchase Price.** To secure payment of amounts payable by Buyer to Mar Cor with respect to the Products, Buyer hereby grants to Mar Cor a continuing purchase money security interest and lien on the Products, whenever sold, consigned, or delivered and wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products (including installation thereof) is paid in full, including payment of any late charges and costs of collection. Buyer grants Mar Cor a limited power of attorney, coupled with an interest, to execute financing statements and other documents or to take any other action in the name of Buyer necessary to perfect the security interest granted herein. Upon Mar Cor’s request, Buyer will execute such other or additional documents as may be necessary for the enforcement or protection of Mar Cor’s security interest granted herein.

**5. 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.

**6. Delivery Terms; Title.** Unless otherwise agreed by Mar Cor in writing, all shipments to points in the U.S. and Canada will be delivered by Mar Cor FOB Mar Cor's facility and all shipments to points outside the U.S. and Canada will be delivered by Mar Cor FCA Mar Cor's facility (as such term is defined in Incoterms 2010); provided, however, that unless Buyer advises Mar Cor that it will arrange and take responsibility for shipment of Products from Mar Cor's facility, Mar Cor will arrange for its freight forwarder and/or carrier(s) to transport the Products to Buyer's specified location. 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. 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, and insurance charges are the sole responsibility of Buyer and will be "pre-paid and add" or otherwise invoiced to Buyer.

**7. Inspection/Acceptance; Installation.** 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. However, shipping damage claims must be made by Buyer directly with the shipping company in accordance with such company's policies, which generally require such claims to be made prior to the time the carrier of the Products leaves the delivery destination. Buyer will advise Mar Cor of such claims. Buyer will be solely responsible for installation and servicing of the Products (except to the extent Buyer purchases such services from Mar Cor). In the event Buyer engages Mar Cor to provide installation services, Buyer is responsible for all reasonable expenses incurred related to such installation.

**8. Changes.** After acceptance by Mar Cor, Buyer's order will not be subject to cancellation or reduction in any amount 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.

**9. Technical Information.** Information on corrosion, pressures, and temperatures may be used as a guide and as a basis for recommendations and should not be interpreted as a guarantee. Products should be tested by Buyer under actual service conditions.

**10. Duty to Select Material.** To the best of Mar Cor's knowledge, the information contained in its publications is correct. All information is based upon tests performed by and data collected by Mar Cor and third party providers. Mar Cor does not assume any liability whatsoever for the accuracy or completeness of such information. Final determination of suitability is the sole responsibility of Buyer and the user of the Product. The manner of use is the sole responsibility of Buyer, the user and/or their engineer.

**11. Medical Devices.** If any of the Products are medical devices, Buyer acknowledges that it is familiar with the U.S. Safe Medical Devices Act of 1990 (the "Devices Act") and the reporting obligations imposed on device users thereunder. In this regard, Buyer agrees to notify Mar Cor within ten (10) days of the occurrence of any event identified in the Devices Act imposing a reporting obligation on Buyer and/or Mar Cor (except for events representing an imminent hazard that require notification to the United States Food and Drug Administration (the "FDA") within seventy-two (72) hours (or such shorter time as required by law), in which case, such notice will be delivered to the FDA and Mar Cor within said period). Buyer will maintain adequate tracking for the Products to enable Mar Cor to meet the FDA requirements applicable to the tracking of medical devices.

**12. Regulatory Disclaimer.** Although Mar Cor has required registrations, approvals and licenses (e.g., U.S. 510(k) pre-market notifications) for all or substantially all of its systems, the purchase of parts and system components from Mar Cor does not provide 510(k) compliance or compliance under any other law, rule or regulation for Buyer's system.

**13. Limited Warranties; Limitation of Warranties.**

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 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. Service is warranted for ninety (90) days from performance of service. Mar Cor will have no warranty obligation whatsoever with respect to any damage to a Product 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 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 replace or repair the defective Product(s) or refund or credit the purchase price to Buyer. The return of defective Products is subject to the terms and conditions of Section 15 below.

MAR COR'S LIMITED WARRANTY HEREUNDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY PRODUCTS 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 WILL MEET BUYER'S REQUIREMENTS. Any oral or written statement concerning the Products 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.

**14. Limitation of Actions.** Any actions or claims by Buyer regarding the sale of Products by Mar Cor must be brought within twelve (12) months after the date of shipment of the Products 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.

**15. Returns.** All returns are subject to prior approval of Mar Cor, in its sole discretion, and require documentation of the return material authorization ("RMA") number requested by Buyer and provided by Mar Cor. Products returned without an RMA number will be returned to Buyer at Buyer's expense and Buyer will bear all risk of loss or damage to the returned Products while in transit. All RMA requests must include one of the following: the original Buyer purchase order number, the Mar Cor sales order number, or the Mar Cor invoice number. Issuance of an RMA number by Mar Cor does not guarantee that a return will be accepted. In the case of an alleged damaged or defective Product, Mar Cor will only accept returns if (i) the alleged damage or defect is established to the satisfaction of Mar Cor; (ii) such Product is still covered by the warranty; and (iii) Buyer has notified Mar Cor in writing within (a) ten (10) days of delivery in the case of a defect or damage that is discoverable on a visual inspection or (b) ten (10) days of discovery of the defect. Return goods criteria are primarily based on the resale potential of the Product, as well as handling and repackaging costs. Standard fast-moving items carry a 25% restocking charge. Slower moving Products may carry a higher restocking charge at Mar Cor's discretion. Non stock items are normally not returnable. If the Product manufacturer agrees to take the Product return from Mar Cor, the return will be subject to the terms and conditions of that manufacturer. All authorized returned goods must be shipped by Buyer freight and insurance prepaid to the location indicated in writing by Mar Cor. Mar Cor does not take possession of a Product until it is received in Mar Cor's system.

All returned Products must be current inventory items in new condition (other than defective Products), in the boxes or other original packaging in which they were shipped and are subject to quality control inspection prior to acceptance. Any damage occurring in transit is between the carrier and Buyer. Mar Cor will assist in the resolution of such claims if requested to do so by Buyer.

Mar Cor will deduct the amount of all approved returns from the invoice or account of Buyer, less any freight, shipping, insurance or handling charges (except as otherwise provided herein). Mar Cor reserves the right to refuse any Products returned to Mar Cor without prior approval. Unauthorized returns will remain Buyer's responsibility and may be destroyed or returned to Buyer at Buyer's expense.

Any freight, shipping, insurance or handling charges associated with a return or cancellation resulting from an error or omission of Mar Cor will be borne by Mar Cor. However, returns that are authorized by Mar Cor for product ordered-in-error or shipped-in-error will not be accepted unless returned within thirty (30) days of delivery.

**16. Trademarks; Copyrights.** Other than the limited use permitted for distributors set forth in Section 35 below, Buyer may not use the Mar Cor name or any Mar Cor trademark, service mark, logo, or copyrighted work for any purpose.

**17. No License.** The sale of its Products by Mar Cor does not constitute a license, implied or otherwise, for the use of any patents or know-how of others, nor does it constitute a license, implied or otherwise, on patents or know-how of Mar Cor, except to the extent that the intended use of such Product by Buyer itself is covered by the claims of a Mar Cor patent.

**18. 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.

**19. Installment.** In the event any purchase of Products by Buyer is deemed or interpreted to be an installment contract, Mar Cor's failure to deliver when due, or nonconformity of, any installment will not substantially impair the value of the overall contract as a whole and will not constitute a breach of contract.

**20. 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 Products provided hereunder, installation, service or otherwise. 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, state, and local (and foreign, to the extent applicable) 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 TO BUYER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PARTICULAR PRODUCTS 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.

**21. 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); (ii) Buyer's breach of this Agreement; (iii) Buyer's gross negligence or willful misconduct; or (iv) damage to a third party by any Products distributed or resold by Buyer to the extent such claim is based on (a) Buyer's modification of or addition to the Products, misuse or abuse of the Products, or breach of any provision in this Agreement; (b) Buyer's failure to abide by all applicable laws, rules, regulations, and orders that affect the Products; (c) Buyer's gross negligence or willful misconduct; or (d) intentional harm to any person or property caused by Buyer. 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.

**22. 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.

**23. Export.** Buyer acknowledges that the Products sold under this Agreement, and the transaction contemplated by this Agreement, which may include technology and software, are subject to United States or Canadian customs and export control laws and regulations and may also be subject to the customs and export laws and regulations of the country in which the Products are received. Buyer acknowledges and agrees that it is Buyer's sole responsibility to comply with and abide by those laws and regulations as applicable. Further, Buyer acknowledges and agrees that under United States law, the Products shipped pursuant to this Agreement may not be sold, leased, or otherwise transferred to restricted countries, any person or entity on the Specially Designated Nationals and Blocked Persons List published by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or utilized by restricted end-users or an end-user engaged in activities related to weapons of mass destruction, including, without limitation, activities related to the design, development, production or use of nuclear weapons, materials, or facilities, missiles or the support of missile projects, or chemical or biological weapons.

**24. 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.

**25. Language.** The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only (or in the French language in the province of Quebec).

**26. 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 State of Minnesota, without regard to conflicts-of-law rules. For all Buyers who are U.S. end-users or U.S. distributors, any and all disputes arising under this Agreement will be dealt with under the exclusive jurisdiction and exclusive venue of the federal or state courts located in Hennepin County, Minnesota, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts. For all Buyers who are Canadian end-users or Canadian distributors, 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.

**27. Arbitration.** For all Buyers who are non-U.S. or Canadian end-users or non-U.S. or Canadian distributors, the parties agree that any dispute, claim or controversy arising out of or relating to this Agreement or any sales hereunder, including any action in tort, contract, or otherwise, at equity or at law, and any claims of fraud in the inducement (a "Dispute"), will be resolved in the manner set forth in this Section. Either party may initiate negotiation proceedings by writing a letter to the other party setting forth the particulars of the Dispute, the terms of this Agreement that are involved and the suggested resolution of the Dispute. If the Dispute is not resolved within thirty (30) days after delivery of the initial written letter setting forth the particulars of the Dispute, either party may submit such Dispute to binding arbitration conducted pursuant to the provisions of this Agreement and the rules of the United Nations Commission on International Trade and Law ("UNCITRAL"), as hereinafter modified or supplemented, except to the extent such UNCITRAL rules are inconsistent with the provisions of this Agreement. Even though the arbitrator(s) must apply the UNCITRAL rules, the arbitration will not be conducted through the UNCITRAL. The parties agree that the following terms apply instead:

- **Selecting Arbitrator(s).** The case will be submitted to a single arbitrator who must be a retired judge or an attorney who has practiced business litigation or in the substantive area of law related to this Agreement for at least ten (10) years. Each party must submit a list of three (3) arbitrators to the other party within ten (10) days after the initiating party has delivered a written notice to the other party demanding arbitration of the Dispute. From the combined list, the parties will mutually agree on the arbitrator. Should the parties be unable to agree on the choice of an arbitrator within thirty (30) days after delivery of the written notice demanding arbitration, the arbitration will be conducted by a panel of three (3) arbitrators. Each party will choose one (1) arbitrator within ten (10) days after the expiration of the above thirty (30) day period and the two (2) arbitrators selected will choose a third arbitrator within five (5) days after their appointment.

- **Location/Costs.** The site of the arbitration will be in the metropolitan area of Minneapolis/St. Paul in the State of Minnesota or such other location as the parties may mutually agree. The exact location within such metropolitan area will be

designated by the arbitrator(s). The non-prevailing party will pay all expenses of the arbitration proceeding, including the expenses and fees of the parties' witnesses and legal counsel and of the arbitrator(s), unless otherwise provided in the award.

- **Discovery/Governing Law/Interim Relief.** The arbitrator(s) will allow the parties to conduct limited discovery. In particular, each party will have the right to serve on the other party no more than twenty five (25) interrogatories, including all discrete subparts. The interrogatories must be answered, under oath, within thirty (30) days of service. Leave to serve additional interrogatories will be granted upon a showing of good cause. In addition, the parties may serve no more than twenty five (25) document requests and take up to ten (10) depositions. The place of the deposition will be the place of residence or the workplace of the deponent, unless otherwise agreed. The arbitration will be conducted in English. The governing law will be the laws of the State of Minnesota, without regard to conflicts-of-law rules. Either party may apply to any court having jurisdiction hereof seeking injunctive relief so as to maintain the status quo until such time as the arbitration award is rendered or the Dispute is otherwise resolved.
- **Final Award.** The arbitration award will be final and binding upon the parties and may be entered and enforced in any court having jurisdiction. The parties hereby submit to the personal jurisdiction of the federal courts located in the State of Minnesota, U.S.A. and consent to the entry of the arbitration award in such courts and in the appropriate courts located in any country where a party has its corporate headquarters.

Except as otherwise expressly provided in this Section, the arbitral award is the exclusive remedy of the parties for Disputes presented or pled to the arbitrators. The award will (i) be granted and paid in U.S. dollars exclusive of any tax, deduction, or offset; and (ii) include interest from the day the breach or other violation of this Agreement occurred until the award is fully paid, computed at the then-prevailing reference rate of Wells Fargo Bank, N.A., Minneapolis, Minnesota. Judgment upon the arbitral award may be entered in any court having jurisdiction thereof. Any additional costs, fees, or expenses incurred in enforcing the arbitral award will be charged against the party that resists its enforcement.

**28. 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.

**29. 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.

**30. Storage and On Hold Orders Policy.** If Buyer requests that Mar Cor delay or defer the shipment of equipment (or otherwise causes a delay of shipment) for more than fifteen (15) days beyond the scheduled ship date, then Mar Cor may store such equipment at Mar Cor's premises or in a contracted warehouse or yard. If a request to delay shipment is made after the equipment has left Mar Cor's premises, then Mar Cor may arrange for such equipment to be stored with the shipper or in a contracted warehouse. In either case, such storage will be at Buyer's risk and expense. When equipment is placed in storage, it will be deemed to have been shipped for invoicing and warranty purposes and Buyer is considered to have accepted the equipment. Buyer will be subject to additional handling, transportation and storage charges, payable upon invoice by Mar Cor. Buyer may not obtain any delay or deferment of delivery unless Mar Cor agrees thereto in writing. In no event will Mar Cor agree to any such delay or deferment unless Buyer establishes good and sufficient cause thereof to Mar Cor's satisfaction, and Buyer agrees in writing to terms acceptable to Mar Cor. In no event may any period of delay or deferment requested by Buyer exceed sixty (60) days.

**31. 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 a separate Supplemental Terms addendum attached hereto and will be deemed a part of this Agreement.

**32. Anti-Kickback Statute - Discounts.** It is the intent of Buyer and Mar Cor to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively. Buyer's price may constitute a 'discount or other reduction in price' under the Anti-Kickback Statute. Mar Cor will provide Buyer with invoices that fully and accurately disclose the discounted price of all Products purchased under this Agreement to allow Buyer to comply with this Section and the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all purchases of Products. Buyer acknowledges that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty

items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third party reimbursement programs, including Medicare and Medicaid. Buyer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported or passed on to payors.

**33. Audits.** Until the expiration of four (4) years after the furnishing of Products pursuant to this Agreement and in accordance with the provisions of Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. §1395x(v)(1)(I)), Mar Cor will make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Comptroller General of the United States (the "Comptroller General"), or any of their duly authorized representatives, upon request, this Agreement, and the books, documents, and records of Mar Cor that are necessary to certify the nature and extent of the costs of the Products furnished in connection with this Agreement. Mar Cor further agrees that if it carries out any of the duties of this Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract will contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Products pursuant to such subcontract, the related organization will make available to the Secretary, the Comptroller General, or any of their duly authorized representatives, upon request, the subcontract, and the books, documents, and records of such subcontractor that are necessary to verify the nature and extent of the costs of the Products furnished in connection with such subcontract.

**34. Federal Program Participation.** Mar Cor represents and warrants that neither it nor any of its current directors, officers, or key personnel: (i) are currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal Healthcare Programs"); (ii) have been convicted of a criminal offense related to the provision of healthcare items or services during the last five (5) years; or (iii) have been excluded, debarred or otherwise declared ineligible to participate during the last five (5) years in Federal Healthcare Programs. Mar Cor will notify Buyer of any change in the status of the representations and warranties set forth above.

**The following provisions (Sections 35 – 41) are only applicable to Buyers who are distributors of Mar Cor:**

**35. Trademarks; Copyrights.** Buyer may use the "Mar Cor" name and Mar Cor's product names solely for the purpose of accurately identifying the Mar Cor-branded Products that Buyer markets or sells. Buyer agrees that any such use will be in accordance with all guidelines provided by Mar Cor and Buyer agrees to change or correct, at its own expense, any label, material, or activity that Mar Cor decides is inaccurate, objectionable, or misleading, or constitutes, in Mar Cor's sole discretion, a misuse of Mar Cor's name, trademarks, service marks, logos, or copyrighted works. Buyer may not use the Mar Cor name or Mar Cor's product names for any other purpose. Buyer may not register or use any domain name or business name containing, or confusingly similar to, any name or mark of Mar Cor's. All brochures, advertising and marketing materials and other documents related to Products that are prepared or used by Buyer (other than those supplied by Mar Cor) must be approved in writing by Mar Cor prior to use.

**36. Traceability.** Buyer will create and maintain accurate records of all activities and events related to the Products to the extent necessary to ensure product traceability. The records will be constructed in such a manner that all significant activities or events will be traceable for a period of not less than two (2) years past the expiration date or two (2) years after the device has been taken out of service, whichever occurs first. Such records must be clear, readily available, and include the following: (i) each order received and accepted; (ii) the serial or lot number of the Product(s) and the address where Product(s) are delivered; (iii) the method of identifying the invoice issued to a customer; and (iv) each customer credit issued and the reason therefor.

**37. Customer Complaints.** Buyer will cooperate fully with Mar Cor in dealing with customer complaints concerning the Products and will take such action to resolve such complaints as deemed necessary or appropriate by Buyer or as may be otherwise reasonably requested by Mar Cor. Buyer agrees to report to Mar Cor any complaint regarding a Product of which Buyer becomes aware within five (5) working days of receiving the complaint or two (2) calendar days if a death or serious injury is involved. Buyer agrees to assist Mar Cor to facilitate the resolution of complaints. For purposes of this Agreement, a complaint can be the occurrence of any of the following: (i) receipt of any Product(s) quality claims, medical claims or complaints or other written claims or complaints; or (ii) receipt of any written communication from any applicable regulatory agency pertaining to a Product.

**38. Digital Files.** Buyer agrees that no digital literature files (whether low, medium, or high resolution) provided by Mar Cor to Buyer or any of Buyer's employees, representatives, contractors, or agents may be directly or indirectly modified or altered in any way, whether for promotion, marketing, sales, or other purposes, without first obtaining the express written approval of Mar Cor. Any modification or alteration made by Buyer without obtaining such approval will be deemed a breach of this Agreement.

**39. Foreign Corrupt Practices Act.** Buyer will comply with all applicable anti-corruption, anti-bribery, and anti-kickback laws, rules, and regulations, including, without limitation, (i) the United States Foreign Corrupt Practices Act (15 U.S.C. §78dd-1, et seq.), and (ii) all international, national and local laws, rules, and regulations (e.g., UK Bribery Act) in any country where Buyer conducts business or in any country where performance of this Agreement or delivery of the Products will occur, including those enacted to comply with the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Convention against Corruption, and the Inter-American Convention against Corruption.

**40. Assignment.** Buyer will not assign, delegate, or permit any other transfer of this Agreement (by stock sale, merger, or otherwise) without Mar Cor's prior written consent. Buyer will not, without the prior written consent of Mar Cor, appoint any subdistributors in connection with the performance of this Agreement.

**41. Sales Representatives and Permitted Subdistributors.** Buyer agrees that all of its sales representatives and permitted subdistributors will be subject to the terms and conditions of this Agreement.

## SUPPLEMENTAL TERMS FOR SERVICE AND INSTALLATION

The following terms are applicable for Buyers who purchase installation or other services from Mar Cor:

**1. Interruption/Delay; In-service/Training:** Unless specified differently upon acceptance of a quotation, it is assumed that the full installation will proceed during a single visit by Mar Cor personnel. If Buyer's work site is not ready for installation at the designated time upon arrival of Mar Cor's installer(s), a job site readiness charge will be assessed against Buyer. If the installer(s) have to leave Buyer's work site due to the site not being ready or the installation is interrupted (beyond the control of Mar Cor) and results in subsequent visits to Buyer's work site for job completion, an additional charge of \$3,000 will be assessed against Buyer. If Mar Cor's installer(s) are not permitted to start-up and test the system immediately upon installation and, in lieu thereof, Buyer or its designee starts-up and tests the system, then Mar Cor will have no responsibility for any issues that would have been resolved if Mar Cor had been permitted to start-up and test the system upon installation. A purchase order will be required for a return trip should Buyer require Mar Cor to return to perform the start-up and testing. At the conclusion of installation, Mar Cor will perform an "in-service" or training at Buyer's site to explain the operation and function of the system. Unless other arrangements are made in advance, the in-service/training will be performed immediately following the completion of installation. Should Buyer not be prepared for the in-service at that time and request a return visit, an additional charge may be assessed against Buyer.

**2. Work Hours:** Quoted prices assume work performed during normal working hours. Any work performed by Mar Cor outside normal working hours will be charged at standard overtime rates in effect at the time such installation or service is provided.

**3. Local Regulations:** If local building codes or regulations (e.g., electrical, plumbing, etc.) dictate a change in equipment or installation method (as per Buyer's quotation), an appropriate change in price will occur. Any such additional pricing will be Buyer's responsibility. 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.

**4. Layout Approval:** Prior to acceptance of a system installation proposal, a proposed room layout will 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. If Buyer's specified space is modified in any way without Mar Cor's approval prior to installation of the system, an additional charge may be assessed against Buyer.

**5. Certain Exclusions:** Unless specifically identified in the body of the quotation, station boxes provided by Mar Cor exclude installation and connection to the drain line or the water, bicarb, or concentrate distribution loops. These connections are the responsibility of Buyer. Quotations do not include seismic restraints. If seismic restraints are required, an additional charge will be assessed against Buyer.

**6. Miscellaneous:**

(a) Buyer is responsible for the disposal of any refuse generated during the system installation.

(b) Buyer agrees to provide site parking for Mar Cor installation vehicles.