MARLO, INCORPORATED OF RACINE, WISCONSIN
TERMS AND CONDITIONS OF SALE

All references in these Terms and Conditions of Sale to "products" shall include equipment, systems, product designs, and all other items of every kind and nature, which are manufactured and/or distributed by Marlo, Incorporated of Racine, Wisconsin ("Marlo").

1. **Offer, Governing Provisions.** This writing constitutes an offer or counteroffer by Marlo to sell its ("products") to Buyer in accordance with these Terms and Conditions of Sale ("terms and conditions"). THIS WRITING IS NOT AN ACCEPTANCE OF ANY OFFER MADE BY BUYER, AND ACCEPTANCE OF THIS OFFER IS EXPRESSLY CONDITIONED UPON THE BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. Buyer will be deemed to have assented to these terms and conditions when, at Marlo's sole option: Buyer shall have given to Marlo (orally or in writing) specifications of quality and/or type of products, delivery dates, shipping instructions, instructions to bill, or the like, as to all or any part of the products; or the Buyer has received delivery of the whole or any part thereof; or the Buyer has otherwise assented to the terms and conditions hereof. NO ADDITIONAL TERMS OR DIFFERENT TERMS OR CONDITIONS SHALL BE BINDING UPON MARLO NOR CAN THE BUYER'S ACCEPTANCE LIMIT OR ALTER MARLO'S TERMS AND CONDITIONS UNLESS SPECIFICALLY AGREED TO IN WRITING SIGNED BY DULY AUTHORIZED PERSONNEL OF MARLO. MARLO HEREBY OBJECTS TO ANY SUCH ADDITIONAL OR DIFFERENT PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER COMMUNICATIONS FROM BUYER. Any document received from Buyer which contains terms and conditions conflicting with Marlo's documents shall not become part of the contract; only those terms and conditions as specified in Marlo's documents shall be binding, unless otherwise modified in writing, and no implied terms and conditions shall be substituted for Marlo's terms and conditions to resolve any conflict.

2. **Order Confirmations.** All purchase orders will be confirmed by Marlo. Any discrepancies in part numbers, pricing, descriptions, or case quantities will be listed in the order confirmation. It is the Buyer's responsibility to review the order confirmations and advise if any changes are to be made.

3. **Quotes & Prices.** Quotations are valid for a period of up to 45 days or for the term stated on the quote, whichever term is shortest. Marlo will make every effort to notify Buyer with price change information. However, prices are subject to change or correction without notice. Shipping weights, dimensions, and anticipated ship dates are all approximate and subject to change.

4. **Taxes.** All taxes (including any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, consumption or any type of value-added taxes, or any other tax, fee or charge of any nature whatsoever) imposed by any governmental authority on or measured by the transaction between Marlo and Buyer shall be paid by the Buyer in addition to the price quoted or invoiced. The price quoted or invoiced includes only those taxes separately stated on the face hereof. In the event Marlo is required to pay any liability for such tax, the Buyer shall indemnify Marlo and hold Marlo harmless from and against all liability relating to such tax. This indemnification and hold harmless shall also apply to any liability resulting from any exemption certificate or other indication of exempt status provided by Buyer not being acceptable to the authority imposing the same.

5. **Freight.** All shipments are F.O.B. Marlo Racine, Wisconsin, unless otherwise specified.

6. **Shipment.** The shipment method should be specified by the Buyer on the purchaser order; otherwise, Marlo will choose the best method of shipment.

7. **Storage and Delayed Shipment.** If Buyer requests or causes a delay in shipment or delivery of any products, Marlo may invoice the affected products as though shipped and place them in storage at Marlo’s facility or with a third party. Marlo may exercise the same rights if Buyer fails to accept shipment or delivery within thirty (30) days after Marlo notifies Buyer that the products have been completed and are available for shipment or delivery in accordance with the applicable order. Any invoice issued under this section shall be payable in accordance with the payment

terms otherwise applicable to the order, measured from the invoice date, notwithstanding that physical shipment or delivery has not occurred.

The applicable storage period shall begin on the date shipment or delivery would have occurred but for a delay requested or caused by Buyer or, if Buyer fails to accept shipment or delivery after notice that the products are ready to ship, on the thirty-first (31st) day after that notice. Beginning on the first day of the applicable storage period, Buyer shall reimburse Marlo for all commercially reasonable storage, handling, insurance, demurrage, redelivery, freight, transportation, and other costs incurred because of the delay. Risk of loss for the affected products shall pass to Buyer when the applicable storage period begins. Marlo shall exercise commercially reasonable care in storing or arranging storage of the products but shall have no obligation to obtain insurance for Buyer's benefit. Marlo's rights under this section are cumulative and do not limit any other rights or remedies available under these terms and conditions or applicable law.

8. **Packaging.** Pricing includes packaging that is satisfactory for air, truck, or containerized shipment at no additional cost, unless otherwise stated. Ocean export crating will require an additional charge.

9. **Terms – Domestic Buyers**. Terms of payment on open accounts are net 30 days from the date of invoice, unless otherwise stated and mutually agreed upon by both parties. Terms will only be issued to Buyers which reside in the United States of America. Orders will not be shipped if any account is past due and/or until payment by check has cleared.

Title to the products shall remain in Marlo until the purchase price due hereunder shall have been paid in full. If the Buyer fails or refuses to pay any part of the amount when due under this contract, then title to the products shall not pass to the Buyer, and Marlo can repossess itself of the products. Invoice price shall be that in effect on date of shipment.

Buyer hereby grants to Marlo a priority lien, purchase money security interest, and/or chattel mortgage in the products and in any accounts receivable or cash from the resale thereof until full payment is made by Buyer to Marlo for the price of all products purchased, as well as any interest, finance charge, late fees, and Marlo's costs of

collection, including reasonable attorneys' fees. On request of Marlo, Buyer agrees to file any financing statements, or other appropriate documents with any appropriate government authority to assure the validity, priority, and enforceability of Marlo's lien. Furthermore, Marlo may file any such financing statements to perfect the security interest herein and is hereby appointed Buyer's attorney-in-fact for purposes of making any such filing. This paragraph is not meant to alter the parties agreement that title to the products remains with Marlo until the purchase price is paid in full, but rather, is meant to give Marlo a security interest in the products in the event Buyer is ever found to have received title to the products by operation of law or equity contrary to the terms hereof.

Orders in excess of $80,000 will require partial payments prior to shipment. A specific progress payment schedule will be stated in the quotation. Partial payments may also be required for orders involving special engineering or Buyer ordered items, regardless of order amount.

Interest will be charged on past due accounts. Interest charges will be calculated on the unpaid balance at 1.5% per month. All questions regarding invoices and terms must be addressed with our accounting department before invoices become due.

Unless specifically included as a separate item, prices quoted do not include any city, county, state, or federal taxes, or transportation of merchandise.

10. **Terms – International Buyers.** All payments due are in U.S. dollars and must be made in advance by check (must clear before shipment), money orders, wire transfer, or credit card. Credit cards that are accepted are Visa, MasterCard, and American Express. Irrevocable Letters of Credit are accepted with a minimum order of $25,000.00 U.S. dollars, per order. Unless specifically included as a separate item, prices quoted do not include any city, county, state, or federal taxes, or transportation of merchandise. A deposit may be required for special or custom ordered items.

11. **Freight Claims.** Any damage, discrepancies, and/or freight claims must be made immediately and directly, in writing, within ten (10) days to Marlo. Marlo will help as much as possible in settling claims. However, Marlo will not be held responsible for breakage or shortage after products are accepted by common

carrier. All shipments must be inspected for damages and counted for shortages at the time of delivery.

12. **Order Changes.** Processing of an order typically begins within one hour of receipt of a purchase order and is typically accomplished within one working day. Orders cancelled after the order has been processed and sent to shipping or engineering will be subject to a minimum 10% cancellation fee, assuming manufacturing has not commenced, and no detailed engineering or special parts have been ordered. Additional fees may be charged depending on the level of completion of detailed engineering, manufacturing, and/or if any special parts have been ordered.

13. **Returns & Restocking.** A Return Goods Authorization (RGA) number must be obtained from Marlo before any product returns can be accepted and/or replacements shipped. All returns for warranty consideration are to be shipped prepaid and must be returned within ten (10) business days from the RGA issuance. Returns determined to be in warranty will be repaired, replaced or their price refunded at Marlo's sole option. Standard catalog products returned, other than valid warranty claims, may be subject to a restocking charge of up to 25%. Custom engineered products and/or special order components may be subject to higher restock fees. Orders shipped incorrectly by Marlo are not subject to restocking charges, and correct items will be shipped to Buyer prepaid.

14. **Excusable Delays.** Marlo shall not be in default for failure to deliver or delay in delivery arising out of causes beyond its control and without its negligence, including but not limited to Acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; shortages of materials or supplies; labor disputes; freight embargoes; delays in transit; consignments lost or damaged by freight agent(s); and unusually severe weather.

15. **Policy.** These terms and conditions may be superseded by specific provisions provided by Marlo. However, should any of these terms and conditions be contrary to or inconsistent with any terms and conditions contained in any purchase order form or other document between Marlo and the Buyer, which is prepared by the Buyer and whenever executed, the provisions hereof shall be controlling and shall supersede the conflicting terms and conditions which are contained in such other

document. No changes shall be made to our terms and conditions without prior written authorization by Marlo.

16. **Limited Warranty.** Marlo warrants its products to be free from defects in design, material, or workmanship for a period of 18 months from shipment date or 12 months from installation, whichever occurs first, when said products are installed and operated in accordance with the written instructions provided and the products are properly cared for upon receipt. The fiberglass reinforced polyester (FRP) resin/media tanks used in certain products alone have an extended warranty period of five (5) years from the shipment date. If, within such period, any such products shall be proven to Marlo's satisfaction to be defective, such products shall be either repaired, replaced, or their price refunded, at Marlo's sole option. Marlo's obligation for non-performance, defective products, or any damage caused by its products or their use, and Buyer's exclusive remedy therefor, shall be limited to such repair, replacement or refund at Marlo's sole option and shall be conditioned upon Marlo receiving written notice, together with a demand for such repair, replacement or refund, within the above warranty period. Marlo shall have no liability for labor or other costs incurred by Buyer in repairing, removing, installing, servicing, or handling of any products, without the express written consent of Marlo. This warranty gives Buyer specific legal rights, and Buyer may have other rights which may vary from state to state. This exclusive remedy shall not be deemed to have failed its essential purpose under any circumstances so long as Marlo is willing and able to repair or replace defective products or refund the purchase price at Marlo's sole option within the time period specified.

17. **Disclaimers of Warranty and Liability.** THE FOREGOING WARRANTIES PROVIDED IN SECTION 15 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (EXCEPT OF TITLE), INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PURPOSE. Marlo does not warrant its products to be suited for any particular purpose. Any suggestions made by Marlo concerning the product, its use, its performances, its production capabilities, quality requirements, and/or suggestions with respect to design, engineering, use, or the like, are to be construed as suggestions only, and any and all specified intended uses should be confirmed by Buyer's independent testing. Any descriptions of the product given to Buyer by Marlo is for the sole purpose of identifying it, is not part of the basis of the bargain, and does not constitute a warranty that the product shall conform to that description. The use of any sample in connection

with the sale is for illustrative purposes only, is not part of the basis of the bargain, and is not to be construed as a warranty that the product will conform to that sample. None of Marlo's agents, employees, or representatives have any authority to bind Marlo to any affirmation, representation, or warranty other than those stated herein. Marlo shall not be subject to any other obligations or liabilities whatsoever with respect to this agreement, products manufactured and/or distributed by it, or any undertakings, acts or omissions relating thereto.

It shall be the sole responsibility of Buyer and/or user to comply with all federal, state, and local rules and regulations concerning the use of products described herein or on the face hereof, and shall not be the responsibility of Marlo.

18. **Disclaimer of Consequential and Incidental Damages and Other Liability; Buyer's Indemnity.** Marlo's liability with respect to breaches of warranties shall be limited as provided in Sections 15 and 16 hereof. With respect to other breaches of this contract, Marlo's liability shall in no event exceed the contract price. MARLO SHALL NOT BE SUBJECT TO AND DISCLAIMS: (a) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR UNDER STATUTE; (b) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS OR ARISING OUT OF OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY MARLO, OR ANY UNDERTAKING, ACTS OR OMISSIONS RELATING THERETO; WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MARLO SPECIFICALLY DISCLAIMS LIABILITY FOR THE TORTS OF NEGLIGENCE, MISREPRESENTATION, AND STRICT LIABILITY; (c) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER; AND (d) ALL LABOR OR OTHER COSTS INCURRED IN REPAIRING, REMOVING, INSTALLING, SERVICING OR HANDING OF ANY PRODUCTS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MARLO SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PENALTIES (INCLUDING ADMINISTRATIVE PENALTIES), SPECIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, NO MATTER HOW CATASTROPHIC, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, FACILITIES OR SERVICES, DOWN TIME, COST OF RECALLS SHUT DOWN OR SLOW DOWN COSTS, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS. ALL OF

THE LIMITATIONS AND DISCLAIMERS CONTAINED IN THIS SECTION 17 AND IN THE REST OF THESE TERMS AND CONDITIONS SHALL APPLY TO ALL CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY.

Buyer shall indemnify Marlo against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Marlo may incur as a result of any claim by Buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Marlo's negligence.

MARLO'S PRICES ARE BASED ON THE POLICIES STATED HEREIN, WHICH LIMIT ITS LIABILITY. IF BUYER DESIRES MARLO TO PROVIDE A WARRANTY GREATER THAN THAT WHICH IS STATED ABOVE, THEN MARLO WILL ADJUST UPWARDS THE PRICE FOR THE PRODUCTS TO REFLECT THE ADDITIONAL EXPENSE TO MARLO WHICH SUCH A WARRANTY OBLIGATION COULD CAUSE. BUYER ACKNOWLEDGES THAT MARLO'S PRICE IS LOWER THAN IT OTHERWISE WOULD BE BECAUSE OF MARLO'S LIMITED WARRANTY AND DISCLAIMER OF TORT LIABILITY, AND SPECIFICALLY BECAUSE OF MARLO'S DISCLAIMER OF THE TORTS OF NEGLIGENCE, MISREPRESENTATION, AND STRICT LIABILITY. BUYER FURTHER ACKNOWLEDGES THAT THE LOWER CONTRACT PRICE GIVEN IN EXCHANGE FOR SUCH DISCLAIMERS FORMS PART OF THE BASIS OF THIS BARGAIN.

No waiver, alteration, or modification of the foregoing shall be valid unless made in writing and signed by an executive officer of Marlo. Marlo reserves the right to alter product designs and materials when conditions warrant, without notice.

19. **Patents, Trademarks, and Copyrights.** Buyer assumes all liability for patent, trade mark, and copy right infringements when products are made to Buyer's specifications.

20. **Solvency.** Buyer hereby represents and warrants to Marlo that Buyer is solvent as of the date of this writing and will remain solvent at the time of delivery. In the event Buyer is not solvent at the time of delivery, the fact of such insolvency shall in and of itself constitute a rightful rejection of the products under §402.602 of the Wisconsin Statutes. Buyer agrees to provide Marlo with immediate

written notice of such insolvency by facsimile to Marlo at (262) 681-1318. Furthermore, in the event Buyer is not solvent at the time of delivery, this document shall serve as notice of Marlo's intent to reclaim all products delivered hereunder and shall create a security interest in all such products.

21. **Mandatory Arbitration.** The mandatory arbitration provisions of these terms and conditions shall be liberally construed so as to require the arbitration of all claims and disputes of every kind and nature, whether arising out of contract, tort, statute, common law, or any other theories of liability and/or recovery in law and/or equity.

Without in any way limiting the above expressed intent, all "Disputed Claims" shall be resolved by mandatory arbitration and shall include, but not be limited to: any differences, claims, matters in dispute, or controversies of every kind or nature as to the existence, construction, validity, interpretation, meaning, performance, non-performance, enforcement, operation, breach, continuance, termination, misrepresentations (both in its formation or its execution), compliance with Federal, State or Local statutes, ordinances, or regulations and any other theories of liability and/or recovery in law and/or equity, arising from or related, either directly or indirectly, to these terms and conditions, the contract of which they are a part, or the matters discussed herein.

All Disputed Claims shall be submitted by the parties to arbitration in accordance with this Agreement and the Wisconsin Arbitration Act, Chapter 788 of the Wisconsin Statutes, if that Act is applicable, and if not, in accordance with the provisions of the United States Arbitration Act, 9 U.S.C. §1 et. seq., or any revisions or recreations of those Acts. In the event of arbitration, each party shall select an arbitrator within thirty (30) days of submission of any Disputed Claims to arbitration. If an arbitrator timely selected by a party is unable, for any reason, to serve until the making of a decision or an award, that party may name a successor arbitrator. If either party fails to designate an arbitrator within the thirty (30) day period, that party's right to name an arbitrator (or any successor arbitrator) is forfeited, and any arbitrator timely named shall select a second arbitrator. The first two arbitrators shall then [within thirty (30) days of the selection of the last of them] jointly select a third arbitrator, the three arbitrators of which shall constitute the "Arbitration Panel". If the two arbitrators to be selected by the parties are unable to agree upon the selection of a third arbitrator, the third arbitrator shall be

supplied by the Circuit Court for Racine County, Wisconsin. Each party shall reach an agreement with the arbitrator named by that party on the compensation to be paid to that arbitrator and shall disclose that agreement to the other party and the other arbitrator. The Arbitration Panel shall render its final decision within six (6) months of the selection of the Arbitration Panel. The Arbitration Panel shall conduct all proceedings in Racine, Wisconsin.

In the event a party forfeits its right to select an arbitrator, then the second arbitrator shall be paid by the forfeiting party upon the same terms as the non-forfeiting party compensates its appointed arbitrator. The parties shall each pay one-half (1/2) of the fees and expenses of the third arbitrator as billed by that arbitrator to the parties.

Notwithstanding any other provision to the contrary, the parties agree and consent to the taking of depositions and the use of discovery in accordance with the Federal Rules of Civil Procedure and the Wisconsin Statutes. Furthermore, an aggrieved party, prior to the naming of the Arbitration Panel as provided for in this Agreement, may petition the Circuit Court for Racine County, Wisconsin, for such temporary equitable relief as the court may determine is appropriate under the circumstances to maintain the status quo until the appointment of the Arbitration Panel as provided for herein.

After submission of the Disputed Claims to arbitration, but not less than ten (10) business days prior to commencement of the arbitration proceeding in which the Arbitration Panel will finally and fully resolve the Disputed Claims, each party shall provide the other party with a final confidential written settlement offer, which shall not be disclosed to the arbitrators prior to the arbitration proceeding. If no settlement is reached, the "Prevailing Party", as defined below, shall be entitled to reimbursement of its reasonable legal fees and expenses and its share of all fees and expenses paid to the arbitrators as part of its final award. In addition to the resolution of the Disputed Claims, the Arbitration Panel shall also determine which of the parties, if any, shall be deemed the "Prevailing Party". A party shall be deemed the "Prevailing Party" only if the award rendered by the arbitrators is more favorable to the Prevailing Party then the Prevailing Party's final written settlement offer to the other party, which shall only be disclosed to the arbitrators after they have reached their final decision with respect to the Disputed Claims. The Arbitration Panel may also determine that neither party is a Prevailing Party for purposes of the standard set forth in this subparagraph.

The arbitrators shall be prohibited from awarding punitive damages even if a party would have otherwise been entitled to recover such damages under Federal, State, or Local statutes, ordinances, or regulations absent this Agreement. The arbitrators shall prepare detailed findings of fact and conclusions of law when rendering their decision.

22. **Final Agreement.** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their agreement. Any subsequent modification or amendment to it may be made only in writing signed by both parties hereto. This writing and these terms and conditions shall be governed by and construed according to the internal laws of the State of Wisconsin.