

Ecolab's Terms and Conditions of Sale
the Food and Beverage Division

DEFINITIONS

In these conditions the following words have the meanings shown

“**Compound**” means Goods of a chemical nature.

“**Conditions**” means these terms and conditions.

“**Contract**” means the contract between us and you for the sale and purchase of Goods and/or supply of Services which incorporates the terms of the Order, these Conditions and any Special Conditions.

“**Goods**” means Goods, Equipment and Loan Equipment described in the Order or sundry invoices for Services provided.

“**Loan Equipment**” means equipment used to dispense our chemical products comprised in the Goods, or to control their dosage.

“**Minimum Quantity**” means the minimum quantity of Goods to be included in an Order so as not to incur delivery charges.

“**Non-Stock Items**” means Goods which are manufactured or packaged to your individual requirements including but not limited to own label products, special formulations and unique pack sizing.

“**Order**” means an order placed by you for Goods and/or Services.

“**Price**” means the price of the Goods and /or the charge for the Services.

“**Services**” means those services to be provided by us as set out in the Order.

“**Special Conditions**” means those conditions which the parties have expressly agreed in writing shall apply to a particular Contract.

“**Us**” “**us**” “**We**” “**we**” “**Our**” “**our**” means the Ecolab company identified in the Contract.

“**You**” “**you**” “**Your**” “**your**” means the party to whom a tender or quotation is addressed or whose order is accepted by us.

GENERAL

- 1.1 The Conditions shall apply to all Contracts to the exclusion of all other terms & conditions contained in, endorsed upon or delivered with, any purchase order, order confirmation, specification or other document you give to us none of which will form part of the Contract and you waive any right which you otherwise might have to rely on such terms & conditions.
- 1.2 All Orders shall be deemed to be an offer by you to purchase Goods and/or Services on these Conditions and any Special Conditions agreed in writing between us and you.
- 1.3 We shall not be deemed to accept any Order you submit unless and until we confirm acceptance of the Order in writing or take steps to appropriate Goods to the Contract or commence performance of the Services, whichever occurs first, at which point the Contract shall come into existence.
- 1.4 Any variations to the Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing by one of our directors or divisional managers.
- 1.5 If you seek to rely on any statement or representation that we, our servants or agents have made to you, other than those in the documents enclosed with our quotation or acknowledgement of order, then you must set out that statement or representation in a document to be attached to or endorsed on the Order and in any such case we may confirm, reject or clarify the point and submit a new quotation.
- 1.6 Our quotations shall be open for acceptance for a period of 14 days from the date shown on the quotation unless during that period and before you accept it, we give you notice withdrawing the quotation. Any quotation, offer or tender is for the entirety of the Goods and/or Services referred to in it. We are not obliged to accept an Order from you for reduced quantities and we may alter the pricing from what appeared in the original quotation if you wish to reduce quantities, alter delivery times or consignments.
- 1.7 Any communications by either party to the other shall, unless otherwise provided in the Contract, be sufficiently made if sent by first class post, postage paid, by e-mail, or facsimile transmission to the address of the other party specified for this purpose in these conditions, or to any other address as either party may substitute by written notice to the other, and shall, unless otherwise provided in the Contract, be deemed to have been made on the day on which such communications ought to have been delivered in due course of postal, e-mail, or facsimile transmission.
- 1.8 Except as otherwise provided in the Conditions neither we nor you shall, without the previous consent in writing of the other, assign the Contract or its obligations under the Contract.

- 1.9 The Contract is the entire agreement between us and you in relation to its subject matter and shall not be contradicted by evidence of any oral, other or prior agreement, understanding, representation or warranties expressed or implied.
- 1.10 The invalidity, illegality or unenforceability of any term or condition of the Conditions shall not affect the validity, legality or enforceability of any other term or condition of the Conditions.
- 1.11 In the event of any conflict between the Order, the Conditions and any Special Conditions, the order of precedence shall be (i) the Special Conditions, (ii) the Conditions, and (iii) the Order.

PRICES

- 2.1 All Prices for Goods and/or Services, unless otherwise stated, include free delivery in mainland UK, Northern Ireland and Republic of Ireland (please see point 2.6 regarding the minimum quantity of goods policy which will be applied to every order). Deliveries are exclusive of VAT and any other applicable duties and taxes.
- 2.2 We may from time to time vary the Price of the Goods and/or Services. We will endeavour to give you as much notice of any increase as is practicable. Goods and/or Services will be invoiced at the Price applicable as at the date the Goods are appropriated to the Contract, or the Services are to be provided, unless we have otherwise agreed with you in writing the Price for the Goods and/or Services.
- 2.3 We do not supply Goods on a sale or return basis.
- 2.4 In the case of Goods delivered in 200 litre drum sizes, transitanks and pallets, the 200 Litre drums, transitanks and pallets remain our property and you must return them to us. If you fail to return the drums, transitanks or pallets within a reasonable time and in good condition then we may charge you for the cost of a new drum, transitank or pallet, as the case may be.
- 2.5 Where you order less than the Minimum Quantity of the Goods or in the event that you require an urgent delivery for example, on a short lead time or outside normal business hours, then we shall be entitled to charge for such delivery.
- 2.6 In respect of orders of less than the Minimum Quantity, the following charges shall be added to the Price and shall be subject to delivery charges:
- (a) Orders in Euros: Between €300 - €500 value there would be a €75 delivery charge added to order
Under €300 value there would be a €150 delivery charge added to order
Over €500 – no delivery charge
For bulk deliveries – surcharge of €140 will be applied to order in case the order is less than 4000kg.
- (b) Orders in GBP Pounds: Between £300 - £500 value there would be a £75 delivery charge added to order
Under £300 value there would be a £150 delivery charge added to order
Over £500 – no delivery charge
For bulk deliveries – surcharge of £140 will be applied to order in case the order is less than 4000kg.

TERMS OF PAYMENT

- 3.1 Unless we otherwise agree in writing, payment shall be due and payable net 30 days from the date of invoice.
- 3.2 We may submit our invoice with our delivery advice note or at any time afterwards save that where delivery has been postponed at your request or by your default then we may submit our invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for your request or default.
- 3.3 Where Goods are delivered by instalments, we may invoice each instalment separately and you shall pay such invoices in accordance with the Conditions.
- 3.4 If you have a bona fide dispute in respect of any invoice you will notify us in writing within 7 days of receipt of the invoice and will pay the undisputed part of the invoice.
- 3.5 You shall make all payments due under the Contract without deduction whether by way of set off, counterclaim or otherwise, unless we agree such deduction in writing in advance.
- 3.6 We may appropriate any payment we receive from you or on your behalf to such Contract or debt outstanding as we decide.

- 3.7 All amounts payable to us under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 3.8 In the event of your failure to pay in accordance with this Condition 3, we shall be entitled without prejudice to any other right or remedy: (a) to suspend all further deliveries of the Goods; (b) to suspend performance of the Services and we shall then not be obliged later to perform those routine or scheduled services that would have been carried out during the period of such suspension; and/or (c) to charge interest on any amount outstanding (both before and after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Acts 1998.
- 3.9 Any scheduled Services not carried out whilst payment is overdue will not be performed retrospectively.

DELIVERY

- 4.1 We shall make delivery of the Goods in such manner and to such places as set out in the Order unless we have agreed with you in writing any alternative arrangements. We may deliver by instalments and any breach in relation to one or more instalments shall not be treated as a breach of the Contract as a whole.
- 4.2 The times we give you for delivery of the Goods are as accurate as possible, but we do not guarantee them. You will have no right to damages or to cancel any Order for our failure for any reason to meet any delivery time stated.
- 4.3 We may deliver the Goods before the delivery date by giving you reasonable notice and you will not refuse delivery for this reason. You will accept delivery of the Goods during the hours of 06.30 – 19.00, unless otherwise agreed in writing by us.
- 4.4 If you fail to give any necessary information, final instructions or approvals to us this may result in delay in delivery for which we shall have no liability.
- 4.5 If you fail to take delivery of or to make payment in respect of any one or more instalment of Goods delivered under the Contract or a series of Contracts we shall be entitled to treat the whole Contract as repudiated by you.
- 4.6 We shall endeavour to comply with your reasonable requests for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to our default, you will pay all resulting costs and expenses including a reasonable charge for storage and transportation and you will pay for the Goods in accordance with the Contract.
- 4.7 Unless expressly agreed otherwise, the Packaging we supply is intended to provide adequate protection throughout normal conditions of transit of usual duration.
- 4.8 You will provide at your expense adequate and appropriate equipment and manual labour for off-loading the Goods.

RISK AND TITLE

- 5.1 Risk will pass to you (so that you are responsible for all loss, damage or deterioration to the Goods) on delivery. Delivery for Goods despatched shall be to your designated point of delivery where you will provide appropriate unloading facilities. Unless otherwise agreed, deliveries will be on a DAP (delivery at point) basis (applicable Incoterms). This provision applies equally to part deliveries of the Goods.
- 5.2 Title to the Goods shall only pass to you upon the happening of one of the following events:
- 5.2.1 you have paid to us all sums due and payable under the Contract and all other Contracts between you and us; or
- 5.2.2 when we serve notice on you in writing specifying that title in the Goods or a portion of them has passed to you.
- 5.3 We may recover Goods in respect of which title has not passed to you at any time and you hereby licence us, our officers, employees and agents to enter upon any premises of yours for the purpose either of satisfying ourselves that you are complying with Conditions 5.4 and 5.5 or of recovering any Goods in respect of which title has not passed to you.
- 5.4 Until title to the Goods has passed to you, you will hold the Goods as our bailee; will store the Goods separately from other Goods and will ensure that they are clearly identifiable as belonging to us.
- 5.5 You will keep the Goods properly protected and insured on our behalf for the full price of the Goods against “all risks” to our reasonable satisfaction and upon request produce the policy of insurance to us.

- 5.6 Before title has passed to you, you may use or sell the Goods to a third party on an arm's length basis, but such third party will acquire no contractual rights against us.
- 5.7 Nothing in these Conditions shall change your obligation to pay for the Goods. Notwithstanding that title may not have passed we may sue for the price of the Goods.

CANCELLATION AND RETURNS

- 6.1 You have no right to vary or cancel a Contract. We shall only agree to a cancellation or variation on condition that you will immediately pay to us all costs and expenses we have incurred up to the time of such variation or cancellation and all our loss of profits and other loss or damage resulting by reason of such cancellation or variation.
- 6.2 You cannot return Non-Stock Items to us for credit.
- 6.3 If we, at our sole discretion, accept the return for credit of Goods correctly supplied, you will pay the then current handling charge.
- 6.4 Before we issue any credit, you must quote the original delivery note number, contract number or invoice number of the Goods in respect of which you seek a credit.

LOSS AND SHORTAGES

- 7.1 You will inspect the Goods within three working days following their delivery and will have no claim for loss or shortages unless you inform us in writing immediately following such inspection, specifying the loss or shortage.
- 7.2 If you do not make a complaint to us within the time specified in Condition 7.1 then we will be deemed to have delivered the correct quantity and you shall be bound to pay for them.
- 7.3 We shall not be liable for breach of contract in the event that the quantity of the Goods we supply in any delivery is within 5% above or below the amount we agreed to deliver. Subject to the above, our liability for shortages of more than 5% of the quantity of the Goods to be delivered shall be limited to supplying sufficient Goods to make up the shortfall within a reasonable time or by agreeing with you that the balance of the Goods outstanding are no longer required and the order is regarded as completed or by issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

DAMAGE IN TRANSIT

- 8.1 Should your inspection pursuant to Condition 7.1 above reveal damaged or defective Goods then you must notify us as stipulated in that Condition, or if such damage or defects were not reasonably apparent upon inspection following delivery, then you must notify us in writing as soon as such inspection takes place and in any event within three working days of such discovery. You will then provide us with access and facilities to inspect the Goods, if we request this. If the damage to the Goods is apparently due to damage in transit, then you will also notify the carriers.
- 8.2 The provisions of Condition 9 below shall also apply to damaged or defective Goods.

GUARANTEE CONDITION

- 9.1 We warrant (subject to the other provisions of these Conditions) that upon delivery and for a period of six months following delivery until the best before date (shelf life or expiry date) stated on the Goods, or if no best before date is shown ,for a period of 12 months, whichever occurs first, the Goods will be fit for the purpose for which the Goods are intended to be used as detailed in our information sheets and literature but not for any other purpose.
- 9.2 We shall not be liable for a breach of the warranty in Condition 9.1 unless:
- 9.2.1 you give written notice of the defect to us,(and if the defect is as a result of damage in transit in accordance with Condition 8.1 above, to the carrier, and at any other time within three working days of the time when you discover or ought to have discovered the defect and accordingly you shall carry out a visual inspection of the Goods and their packaging immediately upon delivery;)and

- 9.2.2 You give us a reasonable opportunity, after receiving the notice, to examine such Goods and you (if we ask you to do so) return such Goods to our designated returns address for the examination to take place there, at our expense or make them available for us or our agents to collect. We reserve the right to charge for the costs of collection or return in the event the Goods are found not to have breached the warranty contained in Condition 9.1.
- 9.3 We shall not be liable for a breach of the warranty in Condition 9.1 if:
- 9.3.1 you make any use of the allegedly defective Goods after giving such notice; or
- 9.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 9.3.3 you alter or repair such Goods without our written consent.
- 9.4 Subject to Conditions 9.2 and 9.3, if any of the Goods do not conform with the warranty in Condition 9.1 we shall, at our option, repair or replace such Goods (or the defective part) or issue a credit note or refund the price of such Goods at the pro rata contract rate provided that, if we so request, the you shall return the Goods (or the part of such Goods which is defective) to us.
- 9.5 Other than as set out in Condition 9.4 we shall have no further liability to you for a breach of the warranty in Condition 9.1 in respect of such Goods.
- 9.6 We warrant that we will perform the Services with reasonable skill and care.

LIABILITY

- 10.1 The following provisions of this Condition 10 set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- 10.1.1 any breach of the Contract; and
- 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in the Contract is intended to exclude or limit our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation.
- 10.4 In the event that either (a) the Goods supplied consist of equipment or Loan Equipment or (b) the Services relate to the installation of Goods or Loan Equipment at your property then in no event shall we be liable in contract, tort or otherwise for loss or damage to your property howsoever caused by the Goods or the provision of Services, for an amount exceeding £500,000 unless otherwise agreed with you in writing.
- 10.5 In no event shall we be liable for any direct losses (subject as below) resulting from defectively installed Goods in an amount exceeding twice the price for the particular Goods.
- 10.6 We exclude all liability for loss of revenue, loss of business, loss of anticipated savings or loss of goodwill and for all forms of indirect loss.
- 10.7 Subject to Conditions 10.2 to 10.3:
- 10.7.1 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the value of the Contract; and
- 10.7.2 we shall not be liable to you for any loss of profit, loss of business, depletion of goodwill or otherwise nor for any indirect or consequential loss or damage; nor for any costs, expenses or other claims for financial compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 10.8 Your sole remedy shall be limited, at our option and at no cost to you, to the repair or replacement of the defective Goods, repeat performance of the Services, or the issue of a refund or credit note of the price paid for them, provided that, if we so request, you shall return the Goods (or the part of such Goods which is defective) to us.
- 10.9 We strongly urge you to ensure that you have adequate insurances in place, including but not limited to business interruption insurance.

DATA AND TECHNICAL INFORMATION

- 11 You may rely upon the information contained in the advertising, sales and technical literature we issue being accurate in the exact circumstances in which it is expressed, otherwise any illustrations, performance details, examples of applications and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are for illustrative purposes only. No such information shall form part of the Contract unless you shall have complied with Condition 1.6 above.

INSOLVENCY

- 12 If you make a composition or voluntary arrangement with your creditors or (being an individual or firm) you become bankrupt or (being a company) you enter administration or go into liquidation (otherwise than for the purposes of reconstruction or amalgamation) or a moratorium comes into force or an encumbrancer takes possession or a receiver or manager is appointed of all or any part of your assets or undertaking, or you cease or threaten to cease to trade, or we reasonably apprehend that any of the above events is about to occur then we may cancel the Contract in whole or in part or suspend deliveries without incurring any liability to you and without prejudice to any right or remedy accrued or accruing to us. If Goods have been delivered or Services performed but not paid for the Price shall become immediately due and payable notwithstanding any earlier agreement or arrangement to the contrary.

FORCE MAJEURE

- 13 Performance of any obligation under the Contract may be suspended, in whole or part, by either of us without liability to the extent that an act of God, war, fire, inability to obtain raw materials due to allocation; labour trouble; strike or injunction; or any other occurrence beyond the reasonable control of whichever of us invokes this Condition, that delays, prevents, restricts or limits the performance of the Contract. Where either of us is affected by any of the above occurrences, we may invoke this provision by promptly notifying the other of the nature and estimated duration of this suspension.

BREXIT EVENT

- 14.1 The following terms in this Section 9.0 shall have the meaning set out below:

“Brexit Event” shall mean the withdrawal of the United Kingdom from the European Union in accordance with Art 50 of the treaty on the European Union.

“Tariff” shall mean any charge, tariff, tax or duty imposed in any jurisdiction on the import or export of any of the Products or the raw and/or packaging materials used to manufacture the Products.

“Trade Barriers” shall mean any restrictions, requirements to obtain authorizations, registrations or listings or other administrative procedures (including, but not limited to, those under REACH, EU BPR or the respective United Kingdom regulatory legislation) that must be complied with by Ecolab before Ecolab is able to import the Products into or freely use or supply the Products within any member state of the European Economic Area (“EEA”) or within the United Kingdom.

- 14.2 If as the result of the Brexit Event Ecolab’s economic benefits are adversely and materially affected by a Tariff, Trade Barrier or by exchange rate fluctuations Ecolab shall promptly consult with Customer and the parties shall use their best efforts to implement any adjustments necessary to maintain Suppliers’ economic benefits derived from the Agreement on a basis no less favorable than the economic benefit Ecolab would have derived if the Brexit Event had not occurred.
- 14.3 If the parties fail to come to a respective adjustment then Ecolab shall have the right to terminate this Agreement with 30 days prior written notice at any time.
- 14.4 Furthermore, any delay in delivery of products or services resulting from Brexit, shall not constitute a breach of the Agreement and the parties shall negotiate in good faith a revised delivery schedule.

CONSUMER PROTECTION ACT 1987 (“the Act”)

- 14.1 In circumstances where we supply Goods to you for incorporation with, or use ancillary to, any composite products to be produced, manufactured, processed or supplied by you then:
- 14.1.1 you will immediately on demand produce for our inspection copies of all written instructions, information and warnings to be supplied by you in relation to such composite products provided nevertheless that such inspection or right to inspect shall not of itself constitute our acceptance or approval of such instructions, information or warnings;
- 14.1.2 you will indemnify, reimburse and compensate us for losses and damages (including costs, expenses and charges for legal actions in which we may be involved) that we may incur in the event that any claim is or claims are made against us pursuant to the Act or otherwise, relating to such composite products in circumstances in which the products we supplied were either:
- (i) not the defective part of such composite products; or
 - (ii) only rendered the composite product defective by reason of your actions or omission; or
 - (iii) only rendered the composite product defective by reason of instructions or warnings given by you or another supplier of the composite parts of the composite product or products; or
 - (iv) in accordance with specifications you had given to us.
- 14.2 For the purposes of this condition the word “defective” shall be interpreted in accordance with the definition contained in the Act.
- 14.3 You hereby acknowledge that you are under a duty to pass on to your customers (where appropriate) all instructions, information and warnings supplied by us with the Goods.

CONFIDENTIAL INFORMATION, INDUSTRIAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

- 15.1 We supply all drawings, designs, documents, confidential records, computer software and other information on the express understanding that we reserve all copyright and design rights and that you will not without our written consent either give away, loan, Appendix, or sell any such drawings, designs, documents, records, software or other information or extracts from or copies of them or use them in any way except in connection with the Goods and for the purposes for which they are issued.
- 15.2 You must notify us immediately of all claims which you receive for alleged infringement in respect of patents, trademarks, registered or unregistered design or copyright and will keep us fully informed of the conduct of such claims.
- 15.3 You will do nothing to harm or damage the reputation of our company, nor denigrate or improperly use our registered trademarks; nor do anything that detracts from our brand image; nor misuse or adapt our logos or copyright materials and you will inform us immediately if you discover someone else is doing so.

LOAN EQUIPMENT

- 16.1 The following provisions apply to all Loan Equipment that we may supply to you on a free-of-charge basis:
- 16.1.1 the Loan Equipment remains our property at all times. You will not cover or remove any of our branding on the Loan Equipment nor any labels or markings as to our ownership of it.
- 16.1.2 the Loan Equipment has been designed for and you will exclusively use it only with the Goods.
- 16.1.3 we will, without charge, replace or repair any part of the Loan Equipment that wears out or becomes defective, but only as the result of normal operation or use.
- 16.1.4 you will not allow anyone, other than our duly authorised representative or someone nominated by that representative, to remove or repair the Loan Equipment.
- 16.1.5 in the event that you cease to buy Goods for use in the Loan Equipment or should you use others’ products in breach of the above, we may remove the Loan Equipment from your premises where it was installed and you will give us access to enable us to do so as well as such facilities (e.g. electricity) as we may reasonably need to do so.
- 16.1.6 you will be liable for the cost of the Loan Equipment if it is lost or stolen, or damaged through misuse outside what may be considered normal operating conditions.

- 16.1.7 In the event of cancellation of the Contract all costs incurred up to the date of cancellation will become due as per condition 6.1 above
- 16.1.8 You will provide a minimum of 30 days' notice to enable us to recover the above equipment.

MISCELLANEOUS

- 17.1 Any right or remedy of either of us has under the Contract is without prejudice to any other right or remedy whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Any failure or delay by either of us in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of our other rights under the Contract.
- 17.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and we both submit to the exclusive jurisdiction of the English courts, save that we shall be entitled to initiate proceedings against you in any other jurisdiction in which you trade in the Goods and you will not object to us doing so.

June 2020