

## TERMS AND CONDITIONS OF SUPPLY

These Terms and Conditions of Supply (**Terms and Conditions**) set out the terms and conditions under which Ecolab New Zealand (Company number 84857) of 2 Daniel Place, Hamilton 3200, New Zealand (**Ecolab**) supplies products, software and services to a customer (Customer).

### 1. Application

- 1.1 These Terms and Conditions apply to all products, software and services (as applicable) (**Supplies**) sold or provided by Ecolab to Customer in New Zealand.
- 1.2 Ecolab may amend these Terms and Conditions from time to time. Amendments will come into effect from the date they are published on Ecolab's website at <https://en-pl.ecolab.com/PAGES/TAC> (**Ecolab Website**). The amended Terms and Conditions will apply to all orders for Supplies placed by Customer after the date of publication.
- 1.3 By placing an order for Supplies with Ecolab, Customer agrees to be bound by the version of these Terms and Conditions (and any policies referred to in these Terms and Conditions) in force at the date of the order.
- 1.4 These Terms and Conditions shall prevail over any terms and conditions stated or referenced in Customer's enquiries, on Customer's orders or in Customer's terms and conditions, which shall be of no force or effect whatsoever.

### 2. Price and Payment

- 2.1 Customer agrees to pay the prices stated on the Ecolab Website or product ordering system (as applicable) at the time of placing the order for the Supplies. Unless otherwise specified, the prices do not include the costs of insurance or any applicable taxes, such as sales tax or goods and services tax which shall be payable by Customer. Ecolab reserves the right to charge additional amounts for any Supplies required beyond any scope of supply agreed by Ecolab and Customer, subject to Customer's agreement to such additional amounts.
- 2.2 Customer must pay the amount invoiced for the Supplies in accordance with these Terms and Conditions within 30 days of the date of Ecolab's invoice.
- 2.3 Unless Ecolab otherwise agreed in writing, if Customer does not pay any amount invoiced by the due date, then in addition and without prejudice to any rights or remedies available to Ecolab:
  - (a) Ecolab will be entitled to impose default interest at the rate of 2% per annum plus a base rate determined by reference to the business reference rate (however described) of Citibank applicable on the due date on the full amount owing from the date payment became due, to accrue daily and be calculated on the balance owing until the date of full and final payment and be payable by Customer monthly on demand;
  - (b) all amounts invoiced to or owing by Customer will become immediately due and payable;
  - (c) Ecolab reserves the right to withhold any or all Supplies (including any service reports, testing results or other services or documentation), cancel any order for Supplies or discontinue providing Supplies to Customer until such time as any amounts due and owing by Customer to Ecolab are paid in full; and
  - (d) to the maximum extent permitted by law, Ecolab accepts no liability whatsoever in connection with the cancellation of any order for or discontinuation of the provision of the Supplies.
- 2.4 Should any invoices be outstanding for 30 days or more at the time when any rebate is due from Ecolab to Customer, Ecolab reserves the right to offset the amount of any outstanding invoices over 40 days against any rebate otherwise due to Customer.
- 2.5 If Customer does not pay any amount by the due date, Customer will be liable for all costs reasonably incurred by Ecolab in connection with any debt recovery, legal proceedings or other action taken by Ecolab to enforce payment.
- 2.6 Ecolab may, upon reasonable notice in writing, suspend credit to Customer in the event that Customer fails to pay an invoice by the relevant due date.

### 3. Delivery

- 3.1 Ecolab will use its reasonable endeavours to deliver the Supplies to Customer in accordance with any agreed delivery requirements, but time of delivery shall not be of the essence and Ecolab will have no liability to Customer (whether for loss or damage or otherwise) if, notwithstanding such endeavours, there is a delay in delivery due to matters beyond Ecolab's reasonable control.
- 3.2 Customer must provide Ecolab or its representative with access to Customer's premises as reasonably necessary to enable Ecolab to deliver or otherwise provide the Supplies. If Customer has provided to Ecolab any keys or security devices used to access Customer's premises (**Keys**), Ecolab will promptly return the Keys upon request by Customer or the completion of the services. If Ecolab does not return any Keys in the same condition in which they were provided to Ecolab, excepting normal wear and tear, Ecolab will pay to Customer the cost of repairing or replacing such Keys.
- 3.3 If Customer:
  - (a) cancels a contracted service visit in its entirety, Customer will be invoiced the full cost of the visit; and
  - (b) refuses to allow Ecolab or its representatives to perform services, or has not followed preparation instructions provided by Ecolab or its representatives so as to require an additional service visit, Customer will be charged for such additional visit at Ecolab's current prices.
- 3.4 Customer agrees to be bound by Ecolab's Freight and Energy Surcharge Policy outlined in clause 11 (and as published on the Ecolab Website) and to pay any charges set out in the Freight and Energy Surcharge Policy as and when required.
- 3.5 Customer must inspect the Supplies immediately after delivery. Subject to clause 9.2(a) and to the full extent permitted by law, any Supplies returned by Customer to Ecolab will be handled in accordance with Ecolab's Returns Policy as published on the Ecolab Website at the time the order for the Supplies was placed. Any Supplies not so returned will be deemed to be accepted by Customer.
- 3.6 Customer must not resell products supplied by Ecolab without Ecolab's prior written consent.

### 4. Equipment

- 4.1 Ecolab may provide equipment to Customer for Customer's use (**Equipment**). All Equipment remains at all times the sole and exclusive property of Ecolab in accordance with clause 6. Any software and documentation provided by Ecolab with the Equipment remains at all times the sole and exclusive property of Ecolab and must only be used by Customer in accordance with clause 7.
  - 4.2 Subject to clause 4.4 and for so long as only Ecolab's products are dispensed in conjunction with the Equipment, Ecolab will provide regular service to maintain the Equipment in useable condition whenever Ecolab considers it necessary, at no charge to Customer, and shall repair or replace Equipment worn or damaged through normal use.
  - 4.3 To the full extent permitted by law, Ecolab shall not be liable to Customer for any damages in relation to the supply or failure to supply or performance of the Equipment. Customer acknowledges that the Equipment is designed for use with Ecolab products. Ecolab shall not be responsible for any damage to the Equipment or Customer's goods caused by use of any other products with the Equipment.
  - 4.4 While the Equipment remains at Customer's premises, or otherwise in Customer's possession or under its control:
    - (a) Customer bears all risk of loss, theft, damage and destruction of the Equipment, excepting normal wear and tear;
    - (b) Customer must keep the Equipment clean, take all reasonable steps to prevent it from deterioration and comply with all directions of Ecolab regarding use of the Equipment;
    - (c) if the Equipment is lost, stolen, damaged or destroyed (including by use of non-Ecolab products with the Equipment), excepting normal wear and tear, Customer will reimburse Ecolab, at Ecolab's election, for any repairs to or replacement of the Equipment or part thereof or for the reduction in value of the Equipment;
    - (d) if Customer makes more than 3 service call outs per year in respect of the Equipment which Ecolab determines relate to or are caused by Customer's equipment, Customer will reimburse Ecolab the costs of the services call out;
    - (e) Customer must comply with all other reasonable directions given by Ecolab in relation to the Equipment;
    - (f) Customer must not remove or in any way interfere with or modify the Equipment without the prior written consent of Ecolab; and
    - (g) Customer must notify Ecolab of any change in ownership, control or disposal of its business.
  - 4.5 Ecolab may replace the Equipment at any time upon reasonable prior notice to Customer to another equipment of the same or substantially similar functionality. Customer agrees that Ecolab has the right to enter Customer's premises at all reasonable times to view, repair or replace the Equipment upon providing reasonable prior notice.
  - 4.6 Customer must promptly return Equipment to Ecolab, or permit Ecolab to collect the Equipment, on written notice from Ecolab or upon termination of supply by Ecolab to Customer. Equipment must be returned in the same condition as received by Customer, ordinary wear and tear excepted. Transporters and tanks must be returned to Ecolab when empty.
- ### 5. Risk
- 5.1 Unless otherwise agreed by Ecolab in writing, the risk of loss and damage to products passes to Customer on delivery to Customer or to Customer's carrier or agent, whichever occurs earlier.
- ### 6. Retention of Title and PPSA
- 6.1 Title to:
    - (a) products supplied will not pass to Customer until Ecolab has received payment in full of the price for all products supplied by Ecolab to Customer and any other money owing by Customer to Ecolab; and
    - (b) any Equipment provided to Customer by Ecolab in accordance with clause 4 will remain with Ecolab at all times.
  - 6.2 Customer acknowledges and agrees that where Ecolab retains title to the products and Equipment:
    - (a) Customer holds the products and Equipment as fiduciary agent and bailee of Ecolab;
    - (b) Customer may use the products and Equipment only in the ordinary course of its business, and may not otherwise deal in any of them; and
    - (c) the products and Equipment must at all times be properly stored, protected and insured so as to enable them to be identified as property of Ecolab.
  - 6.3 If: (a) Customer exceeds any credit limit specified by Ecolab from time to time; (b) execution is to be levied against the products or Equipment; or (c) Customer becomes insolvent, has a receiver or administrator appointed over all or any part of its assets, enters into any arrangement or composition with its creditors or enters into liquidation, or is otherwise unable to pay its debts when due, to the extent that Ecolab retains title in the products and Equipment, Ecolab may on prior written notice to Customer, either by itself or by its agent, enter Customer's premises, or the premises of any related body corporate or agent where products and Equipment are located, without liability for trespass or any resulting damage, and to re-take possession of products and Equipment and keep or dispose of them.
  - 6.4 Ecolab may register on the Personal Property Securities Register any and all Security Interests granted under this clause 6. To the full extent permitted by law, Customer waives any right it may have to receive from Ecolab a copy of any notice required under the PPSA, including any financing statement, financing change statement or

verification statement registered or received by Ecolab in respect of such Security Interests.

- 6.5 Customer agrees and acknowledges that the Terms and Conditions of this Agreement constitutes a security agreement which creates a security interest in favour of Ecolab in all products and Equipment supplied by Ecolab to the Customer from time to time and in the proceeds relating to that product and Equipment for the purposes of the PPSA and to better secure the Customer's performance of its obligations under the Agreement.
- 6.6 Customer agrees and undertakes to:
- promptly do all things necessary, including executing all documents that Ecolab may reasonably require and providing all relevant information and cooperating fully with Ecolab, at its own expense, to enable Ecolab to register a financing statement on the Personal Property Securities Register to ensure that at all times Ecolab has a perfected Security Interest in respect of all Security Interests created under these Terms and Conditions, and wherever possible a Purchase Money Security Interest;
  - give Ecolab not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details;
  - not attempt to register a financing change statement in respect of a Security Interest contemplated or constituted by this Agreement without the prior written consent of Ecolab; and
  - not to create or purport to create any Security Interest in the products and the Equipment nor register, or permit to be registered, a financing statement or a financing change statement in relation to the products and the Equipment in favour of any other person without the prior written consent of Ecolab.
- 6.7 Customer must not grant any other Security Interest in respect of the products and Equipment which would rank equally with, or in priority to, a Security Interest held by Ecolab over the products and Equipment, ensuring that at all times Ecolab has a first ranking security interest in the products and Equipment.
- 6.8 As between debts owed to Ecolab secured by Purchase Money Security Interests and other debts, Ecolab will be entitled to apply monies received from Customer against the other debts first at its sole discretion and despite any direction from Customer to the contrary.
- 6.9 Where Ecolab has a Security Interest in the products and the Equipment, Customer agrees that, to the extent permitted by law, sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA shall not apply on the enforcement by Ecolab of any Security Interest.
- 6.10 Where Customer has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 6.11 For the purposes of this clause 6:
- PPSA means the *Personal Property Securities Act 1999*; and
  - "proceeds" includes, where the context permits, any proceeds for purposes of the PPSA, and the terms "financing statement", "financing change statement", "Purchase Money Security Interest", "Personal Property Securities Register", "Security Interest", "perfection" and "verification statement" have the meanings given to those terms in the PPSA.

## 7. Software

- 7.1 Ecolab may make available software to Customer (**Software**). Customer acknowledges and agrees that the Software is a third party product and that the supply of the Software by Ecolab is limited to the supply of the licence, access or subscription for the Software.
- 7.2 Subject to any user number or similar limitations applying to the Software and Customer's payment of the fees for the applicable period of use and access, Customer may permit its personnel (**Authorised Users**) to access and use the Software in accordance with this clause 7. Customer agrees and acknowledges that it will comply, and will ensure all Authorised Users comply, with all terms set by the third party licensor (**Licensor**) for access and use of the Software.
- 7.3 Customer acknowledges and agrees that Customer has no proprietary rights or title to or interest in the Software and acknowledges that the Licensor (or as it may arrange) remains at all times the exclusive owner of the Software.
- 7.4 Except as expressly permitted by this Agreement, and except to the extent that applicable laws (including the *Copyright Act 1994*) prevent Ecolab restraining Customer from doing so, Customer must not:
- reproduce the Software or make any adaptation of the Software or any other derivative work from the Software; or
  - de-compile, disassemble or otherwise reverse engineer the Software.
- 7.5 If the Software is provided on a software as a service basis, Customer acknowledges that Ecolab or the Licensor may make changes to the Software from time to time as part of changes rolled out to all users.
- 7.6 Customer shall immediately and fully notify Ecolab of any actual, threatened or suspected infringement of the intellectual property rights in the Software which comes to Customer's notice, and of any claim by any third party coming to Customer's notice that the Software infringes any rights of any other person.
- 7.7 If Ecolab instructs Customer to cease or modify use of the Software due to an instruction Ecolab receives from the Licensor to address any third party infringement claim then Customer must immediately comply with that instruction. Subject to Customer's compliance with the instruction issued, to the extent permitted by law, Customer's sole recourse against Ecolab in response to an instruction issued under this clause 7.7 is to receive a refund of any amounts paid for the affected Software to the extent that Customer is no longer able to enjoy the benefits of the affected Software.
- 7.8 Customer indemnifies Ecolab and its agents, employees, officers, directors and subcontractors in respect of all claims, losses and liability (including attorney's fees) to the extent arising out of or connected with a third party claim relating to Customer's use of the Software beyond what is expressly permitted by these Terms and Conditions including any terms required by the Licensor.

## 8. Confidentiality

- 8.1 Each party undertakes to maintain and procure the maintenance of the confidentiality of the other party's information at all times and to keep and procure the keeping of that information secure and protected against theft, damage, loss or unauthorised access or processing, and not at any time, without the prior written consent of the other party directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any of that information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations under these Terms and Conditions, or to the extent that such information:
- is or becomes public other than as a result of a breach of any obligations of confidence;
  - was lawfully obtained from a third party not under any obligations of confidence;
  - was already known to a party before its disclosure under these Terms and Conditions other than as a result of any breach of any obligations of confidence; or
  - is required by law, regulation or order of a competent authority to be disclosed by the other party.

## 9. Warranties and Limitation of Liability

- 9.1 **Warranties.** To the maximum extent permitted by law:
- all conditions, representations, warranties and guarantees, whether express or implied, by statute or otherwise, in relation to the products and services are expressly excluded;
  - if applicable, Ecolab expressly disclaims any conditions, representations, warranties and guarantees with respect to water system biohazards from waterborne pathogens, including but not limited to Legionella bacteria; and
  - in the case of pest services, Ecolab does not guarantee that pests will be completely and permanently eradicated from Customer's premises. Pests may gain entry to premises with deliveries by third parties, due to structural defects or other means beyond Ecolab's reasonable control.
- 9.2 **Limitation of Liability.**
- The limitations on Ecolab's liability in these Terms and Conditions are made to the extent permitted by law. Nothing in these Terms and Conditions restricts the effect of any warranties or conditions which may be implied by law or any other rights or remedies which cannot be excluded, restricted or modified. Subject to those laws, to the extent to which Ecolab is entitled to do so, its liability under such implied conditions or warranties or other rights or remedies will be limited, at Ecolab's option, to:
    - in the case of goods:
      - the replacement or repair of the relevant goods, or the supply of equivalent goods; or
      - the payment of the cost of replacing or repairing the goods, or of acquiring equivalent goods; and
    - in the case of services:
      - supplying of the services again; or
      - the payment of the cost of having the services supplied again.
  - To the maximum extent permitted by law, Ecolab is not liable in any way whatsoever, whether in tort (including negligence), contract, breach of statute or otherwise, for any incidental, indirect, special or consequential losses or damages or economic loss, including any loss of clientele, loss of business revenues or loss of profits by Customer.

## 10. Force Majeure and Shortages

- 10.1 Without prejudice to any other provisions of these Terms and Conditions, neither party shall be liable for any delay in performance or failure to perform any of its obligations (other than regarding payment), if such performance is prevented, restricted or affected by any event or circumstance outside a party's reasonable control, including strike, lockout, industrial dispute, war, riot, civil disorder, fire, explosion, flood, accident, epidemic, pandemic, plant breakdown or government intervention (**Force Majeure Event**), and shall be excused from performance for so long as the Force Majeure Event lasts.
- 10.2 Each party must:
- notify the other party immediately after becoming aware that a Force Majeure Event has occurred;
  - keep the other party fully informed of the circumstances of the Force Majeure Event and the effect upon performance of its obligations; and
  - take all reasonably practical steps to limit the effects of the Force Majeure Event on the performance of its obligations.
- 10.3 In cases of shortages of Supplies for any reason, Ecolab may allocate the available Supplies among customers as it reasonably considers practical.

## 11. Freight and Other Charges

- 11.1 Ecolab quotes customer prices inclusive of freight based on compliance with Ecolab's Freight and Energy Surcharge Policy, as published on the Ecolab Website. Ecolab will, however, pass on the cost of freight to Customer for deliveries outside of the terms of Ecolab's Freight and Energy Surcharge Policy. This will be done on a cost-recovery basis only.
- 11.2 Details of the freight charges and the circumstances in which these will be charged to Customer are set out in Ecolab's Freight and Energy Surcharge Policy. Orders for products outside of the terms of Ecolab's Freight and Energy Surcharge Policy will be subject to the following principal charges:
- Minimum Order Charge - Customer will be charged a Minimum Order Charge for all orders.

- (b) Maximum Order Charge - Customer will be charged a Maximum Order Charge if the maximum order threshold applicable to Customer is exceeded in any one month.
  - (c) Rush Order Charge - Customer will be charged a Rush Order Charge if Customer requests delivery of products outside of Ecolab's prescribed delivery timelines.
- 11.3 The Minimum Order Charge and the Maximum Order Charge will not both be charged to Customer in relation to the same order. The Minimum Order Charge applies until the maximum order threshold is exceeded, after which the Maximum Order Charge applies. However, a Rush Order Charge and a Minimum Order Charge or Maximum Order Charge may apply to the same order.
- 11.4 Ecolab may apply an energy surcharge to invoices where it considers it reasonably necessary to mitigate substantial cost inflation in respect of energy inputs, in order to ensure that Ecolab can continue to provide reliable product supply. Details of the energy surcharge (if any) will be set out in Ecolab's Freight and Energy Surcharge Policy as published on the Ecolab Website at the time of the order. The energy surcharge will only apply to orders placed by Customer after the date of publication of the relevant version of the Freight and Energy Surcharge Policy.

## 12. Dispute Resolution

- 12.1 If a claim, disagreement or dispute (**Dispute**) arises between the parties, a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following (except to seek urgent interlocutory relief):
- (a) a party claiming that a Dispute has arisen must give written notice to the other party specifying the nature of the Dispute;
  - (b) on receipt of notice by the other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, independent expert evaluation or determination or similar techniques agreed by them;
  - (c) if the parties do not agree within 7 days of receipt of the notice (or any other period agreed in writing by them) concerning: (i) the dispute resolution technique and procedures to be adopted; (ii) the timetable for all steps in those procedures; and (iii) the selection and compensation of the neutral person required for the technique, the parties will immediately be deemed to have submitted the Dispute to mediation by a single mediator agreed upon in writing by them or (if they are unable to agree on a mediator within 7 days after the submission to mediation) nominated by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc. In the event of any submission to mediation:
    - (i) the mediator will not be acting as an expert or as an arbitrator;
    - (ii) the mediator will determine the procedure and timetable for the mediation; and
    - (iii) the parties will share equally the cost of the mediation.

## 13. Assignment

- 13.1 Customer may not assign or transfer, in whole or part, its rights and obligations under these Terms and Conditions without the prior written consent of Ecolab, which consent may not be unreasonably withheld and delayed.
- 13.2 Customer agrees that Ecolab may assign its rights and novate its obligations under these Terms and Conditions to an Ecolab parent, subsidiary or affiliate (**Assignee**) by providing 14 days written notice to Customer without further documentation, and provided this does not materially affect Customer's rights under these Terms and Conditions. On and from the time of assignment and novation:
- (a) Assignee will be treated as if it were the original contracting party in place of Ecolab; and
  - (b) Customer releases Ecolab from its rights and obligations under these Terms and Conditions and all claims, actions, demands, proceedings and liability which Customer may have or claim to have or might have had against Ecolab in connection with these Terms and Conditions.
- 13.3 Customer must at the request of Ecolab do anything necessary or desirable to give full effect to clause 13.2.

## 14. Miscellaneous

- 14.1 These Terms and Conditions can only be altered, varied or added to by prior written approval of an authorised representative of Ecolab.
- 14.2 The parties are independent contractors and these Terms and Conditions are not intended to create any partnership, trust or agency relationship.
- 14.3 The provisions of these Terms and Conditions are binding upon and inure to the benefit of each party's respective successors or permitted assigns.
- 14.4 If any provision of these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable in any jurisdiction, it is to be read down and severed in that jurisdiction to the extent that it is unlawful, invalid or unenforceable, and the validity and enforceability of the remaining provisions shall not be thereby affected.
- 14.5 If at any time Ecolab does not enforce any of these Terms and Conditions or grants Customer time or other indulgence, Ecolab shall not be construed as having waived that term or condition or its right to later enforce that or any other term or condition.
- 14.6 These Terms and Conditions are governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.