

## **1 INTERPRETATION**

- 1.1. In these Conditions unless the context otherwise requires:
- a) **'Buyer'** means the person whose written order for Goods or Services is accepted in Writing by the Seller and **'Contract'** means the contract arising from such acceptance;
  - b) **'Goods'** means the goods which are the subject of the Contract including any software supplied;
  - c) **"Back Order"** means an Order which has been placed which the Seller is not able to fulfil due to supply or manufacturing constraints. Excludes unforecasted demand.
  - d) **"Compound"** means Goods of a chemical nature.
  - e) **"Domestic Delivery"** means delivery of the Goods within the United Kingdom.
  - f) **"Export Delivery"** means delivery of the Goods outside the United Kingdom.
  - g) **"Minimum Quantity"** means the minimum quantity of Goods to be included in an Order so as not to incur delivery charges.
  - h) **"Non-Stock Items"** means Goods which are manufactured or packaged to the Buyer's individual requirements including but not limited to own label products, special formulations and unique pack sizing.
  - i) **"Order"** means an offer from the Buyer to purchase Goods and/or Services from the Seller.
  - j) **'Seller'** means Ecolab Limited of Winnington Avenue, Northwich, Cheshire, CW8 4DX;
  - k) **'Conditions'** means the terms and conditions in this document;
  - l) **'Services'** means the services which are the subject of the Contract; and
  - m) **'Special Terms'** means any special terms and conditions of the Contract agreed in Writing between the Buyer and the Seller.
  - n) **'Writing'** means any communication in Writing such as letter, fax, e-mail, SMS or internet.

## **1 BASIS OF SALE**

- 2.1. The Seller shall sell and the Buyer shall purchase Goods and/or Services in accordance with these Conditions, to the exclusion of all other terms and conditions (whether of the Buyer or otherwise) provided that any Special Terms which contradict these Conditions shall prevail over these Conditions.
- 2.2. No Order submitted by the Buyer shall be deemed to be accepted by the Seller and no contract for the supply of goods or services shall arise unless and until confirmed in Writing by the Seller.
- 2.3. No variation to these Conditions or any Contract shall be binding unless agreed in Writing between the Buyer and the Seller.
- 2.4. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 2.5. Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

- 2.6. The Seller does not give any warranties or representations in respect of any oral advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents which is not confirmed in Writing by the Seller.
- 2.7. If the Buyer chooses to act upon, follow or implement such advice and/or recommendations, the Buyer shall do so entirely at the Buyer's own risk and shall indemnify and hold the Seller harmless against all costs, expenses, losses, damages, advisors', lawyers' and legal fees incurred by the Seller or for which the Seller is liable in connection with such advice and/or recommendations, provided always that nothing in these conditions shall affect the Buyer's rights or remedies in respect of any fraudulent misrepresentation.
- 2.8. Notwithstanding any terms and conditions submitted by the Buyer at any time or by any means including but not limited to those appended by or referenced in the Buyer's purchase order:
  - a) the Buyer shall be deemed to have accepted these Terms upon submitting its purchase order, communicating acceptance or upon its performance of the [Contract/Order] or otherwise indicating by conduct that it has accepted these Terms, whichever occurs earlier.
  - b) the Terms shall apply to all Contracts to the exclusion of all other terms & conditions of the Buyer unless agreed in writing by the Country Manager of Ecolab.
  - c) The Buyer waives any right which the Buyer otherwise might have to rely its own terms & conditions.

## **2 ORDERS, QUOTATIONS AND SPECIFICATIONS**

- 3.1. Quotations shall be open for acceptance for a period of 30 days from the date shown on the quotation unless during that period and before the Buyer's acceptance, the Seller gives the Buyer notice withdrawing the quotation. Any quotation, offer or tender is for the entirety of the Goods referred to in it.
- 3.2. The Buyer is responsible for the accuracy of the terms in any Order and where relevant for ensuring that any specifications in any quotation from the Seller are correct and/or meet the requirements of the Buyer and for giving the Seller all information relating to its requirements for Goods and Services.
- 3.3. Any quotation given by the Seller shall incorporate these Conditions but no obligations or commitment on the Seller shall arise in respect of a quotation unless and until an order, specifically referring to that quotation, shall have been placed with and accepted by the Seller in accordance with these Conditions.
- 3.4. All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.5. The Seller reserves the right to change any specifications of Goods or Services after the formation of a Contract to conform with any applicable safety or other statutory or regulatory requirements or when such change does not materially disadvantage the quality or performance of such Goods or Services.

3.6. If the Buyer cancels the Contract or defers all or part of its delivery or performance of Services or breaches any of its obligations thereunder, the Buyer shall indemnify and hold the Seller harmless from and against all losses, claims, proceedings, demands, charges, actions, damages, costs and expenses and any other liabilities of the Buyer and/or third parties suffered or incurred by the Seller (including any professional or legal expenses) arising directly or indirectly out of or in connection therewith..

3.7 Back Orders will be fulfilled at the Seller's sole discretion as and when Goods are reasonably available.

### **3 PRICE OF THE GOODS OR SERVICES**

4.1. The price of the Goods or Services shall be the Seller's price in any relevant quotation or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the Buyer's order.

4.2. The Seller reserves the right, by notice in Writing to the Buyer at any time, to increase the price of Goods or Services to reflect any increase in the cost to the Seller of manufacture or supply which is due to any cause beyond the reasonable control of the Seller and/or where there is at the request of the Buyer, any change in delivery dates, quantities or specifications and/or where there is any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3. Unless otherwise agreed in Writing all the Seller's prices are ex works, and where the Seller arranges transport on behalf of the Buyer, the Buyer shall be liable for all the Seller's charges for transport, packaging, and insurance and where the Seller installs Goods, the Buyer shall pay the Seller's charges for installation. All prices, charges and costs are exclusive of any applicable value added or sales, withholding or other similar tax, which shall be for the Buyer's account.

### **5 TERMS OF PAYMENT**

5.1. Unless otherwise agreed in Writing, the Seller shall invoice the Buyer for the price of the Goods or Services and all other relevant charges on or at any time after despatch of the Goods or provision of the Services, except where:

- (a) Goods are to be collected by the Buyer;
- (b) the Buyer fails to take delivery of the Goods;
- (c) the Seller is unable to gain access to the premises where the Services are to be provided; or
- (d) is otherwise restricted from providing the Services;

in which case, the Seller shall be entitled to raise an invoice at any time after notifying the Buyer that the Goods are ready for collection or the Services can be provided or the Seller has offered delivery of the Goods or the provision of the Services or stated that they are ready for delivery.

5.2. The Buyer shall pay the full price of the Goods or the Services without deduction or set-of within 30 days of the date of the Seller's invoice. Time for any payment by the Buyer shall be of the essence of any Contract.

5.3 The Seller may appropriate any payment received from the Buyer or on the Buyer's behalf to such contract or debt outstanding as the Seller, in its sole discretion, decides.

5.4. If the Buyer fails to make any payment on the due date then, without prejudice to any other rights available to

it, the Seller shall be entitled to suspend any further deliveries of Goods or provision of Services to the Buyer pending payment.

5.5 The Seller may charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above The Bank of England base rate from time to time, until payment in full is made.

### **4 DELIVERY**

6.1. Unless otherwise agreed in Writing delivery of the Goods shall be made to the Buyer at the Seller's premises at a time notified by the Seller following consultation (where appropriate) with the Buyer after notification by the Seller that the Goods are ready for collection or delivery.

6.2. Unless otherwise agreed in Writing provision of the Services shall be made at the premises set out in the Buyer's order on the date agreed between the parties.

6.3. Unless otherwise agreed between the parties, delivery shall be deemed to be effective and risk of loss and/or damages in Goods shall pass:

- a) in the case of Goods to be collected by the Buyer or the Buyer's agents, when the relevant Goods are loaded on to the vehicle collecting them;
- b) in the case of Goods delivered by the Seller or its agents otherwise than at the Seller's premises when the Goods are unloaded at the address nominated by or on behalf of the Buyer; and
- c) provided always that if Goods are not collected by or for the Buyer or if the Buyer fails to accept delivery at the agreed date at the time notified by the Seller they will be stored (at the Buyer's expense and risk of loss or damage) with the Seller having the right to dispose of same following notice to the Buyer.

6.4. Any dates quoted or agreed for delivery of Goods or provision of Services are approximate only and the Seller shall not in any event be liable for any delay in delivery of the Goods or provision of the Services however caused. Delivery dates may be amended by the Seller by giving notice to the Buyer. In any event the Seller shall be under no liability whatsoever for any delay in delivery of Goods or performing the Services or for performance of the Contract.

6.5. Goods may be delivered by the Seller in advance of the agreed delivery date upon giving reasonable notice to the Buyer.

6.6. Whilst the Seller's packaging of the Goods is adequate for normal delivery, the Buyer must notify the Seller in the Order, of any special delivery conditions.

6.7. The Buyer will provide at the Buyer's expense adequate and appropriate equipment and manual labour for off-loading the Goods.

6.8. Without prejudice and subject to the terms of any Conditions which otherwise exclude or limit the liability of the Seller, and subject to the Buyer's duty to mitigate its loss, the Seller's liability under any Contract for failure to deliver the Goods or perform the Services shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of equivalent goods or services to replace those not delivered or provided or those in respect of which the complaint is made over the price of the Goods or Services or the Contract price of the Goods or Services not delivered or provided, whichever is the lower.

- 6.9. The Seller does not supply Goods on a sale or return basis.
- 6.10. Unless otherwise agreed in writing, the Seller shall make delivery of the Goods in such manner and to such place as set out in the Order. The Seller 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.
- 6.11. Subject to clause 6.4, where Goods are held in stock:
- a) Orders for Domestic Delivery will be shipped within 3 days of the Seller's receipt of the Buyer's Order; and
  - b) Orders for Export Delivery will be shipped within 7 days of the Seller's receipt of the Buyer's Order.
  - c) The Seller will inform the Buyer on receipt of the Buyer's Order as to whether the Goods are held in stock.

## **7 CANCELLATION AND RETURNS**

- 7.1. The Buyer shall have no right to vary or cancel an Order once it has been confirmed by the Seller. In the event that the Seller agrees to cancel or vary the Order, the Buyer will immediately pay all costs and expenses, loss of profits and other loss or damage arising out of such cancellation or variation. Furthermore, the Seller may adjust the pricing from that stated in the Seller's quotation.
- 7.2. The Seller is not obliged to accept an Order from the Buyer for reduced quantities and the Seller may alter the pricing from what appeared in the original quotation if the Buyer wishes to reduce quantities, alter delivery times or consignments.
- 7.3. The Buyer cannot return Non-Stock Items to the Seller for credit
- 7.4. If the Seller in its sole discretion, accept the return for credit of Goods correctly supplied, the Buyer will pay the Seller's then current handling charge.
- 7.5. Before the Seller issues any credit, the Buyer must quote the original delivery note number, contract number or invoice number of the Goods in respect of which the Buyer seeks a credit

## **8 RISK AND PROPERTY**

- 8.1. Notwithstanding delivery and the passing of risk in Goods, and/or any other provision of these Conditions, the property in Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the relevant Goods and all other sums which are or which become due to the Seller from the Buyer on any account.
- 8.2. Until such time as the property in Goods passes to the Buyer:
- a) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property;
  - b) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods; and

- c) the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or where the Buyer's right to possession has terminated to recover them.

- 8.3. The Buyer shall not pledge or charge by way of security any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller in respect of such Goods shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **9 WARRANTIES AND LIABILITY**

- 9.1. The Buyer will inspect the Goods upon delivery and will inspect the results of the Services upon completion of the Services. The Buyer will notify the Seller in writing of any Defect within 7 days following delivery.
- 9.2. The Seller warrants that:
- a) the Goods will correspond with the description in the Seller's quotation;
  - b) the Services shall be provided with reasonable care and skill; and
  - c) the Goods will be free from defects in material and workmanship for a period of twelve months from the date of their initial use or twelve months from delivery, whichever is the first to expire.
- 9.3. If the Goods or Services do not conform with warranties set out at clause 8.2 or there is a defect in the performance of the Services or damage to the Goods whilst under the Seller's control ("**Defect**") and subject to the Buyer's compliance with clauses 9.1 and 5, the Seller shall, at its option, either repair or replace the Good(s) and/or re-perform the Services or shall refund a part of the Price.
- 9.4. The Seller is liable only for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Goods and results of the Services.
- 9.5. The Seller shall have no liability for defects if the Buyer makes any use of allegedly defective Goods or for Defects arising out of causes such as but not limited to:-
- (a) Normal wear and tear or deterioration of the Goods;
  - (b) a design, specification or material(s) provided by the Buyer; or
  - (c) any act or omission of any person other than the Seller or its subcontractor.
- 9.6. The Seller shall be under no liability under the above warranties (or any other warranty, condition or guarantee express or implied) if the total price for the Goods or Services has not been paid by the due date for payment.
- 9.7. The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer to the Seller to the extent that the same are exercisable by or on behalf of any third party such as the Buyer.
- 9.8. Any test or inspection of the Goods required by the Buyer in addition to the Seller's usual or routine tests or inspection, and which are agreed by the Seller, shall,

unless otherwise agreed, be at a time agreed by the Seller and at the expense of the Buyer.

- 9.9 Notwithstanding anything to the contrary in this Agreement, the remedy set out in this clause 9 shall be the Buyer's sole remedy for Defects including in respect of latent defects and the Seller's liability for Defects shall cease 7 days following delivery of the Products.
- 9.10 Except as expressly set out in this Agreement, the warranties and conditions in this Agreement are exclusive and in lieu of all other warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise. All conditions, warranties and representations, implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Products are excluded to the fullest extent permitted by law.

## **10 LIMITATION OF LIABILITY**

10.1 To the maximum extent permitted by law and notwithstanding anything to the contrary in this contract:-

- a) the Seller's total liability in respect of any and all claims for damages or losses caused by breach of contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, statutory duty or otherwise, which may arise in connection with its performance or non-performance under this contract shall not exceed in the aggregate the monies paid by the Buyer during the 12 month period immediately preceding the date of the Buyer's written claim under the Agreement or, in the event that the Agreement has terminated, the 12 month period ending with the final day of the Agreement; and
- b) in no event shall the Seller be liable to the Purchaser, whether as a result of breach of contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, statutory duty or otherwise, for any of the following damages or losses (in each case whether direct or indirect):-
- i) loss of profit, loss of contract, interruption of business, loss of production, economic loss, wasted expenditure or costs, loss of anticipated savings, loss of or damage to goodwill; or
- ii) any special, incidental, indirect or consequential loss or damage howsoever caused even if the Seller was advised of the possibility of them in advance; and
- c) nothing in the Contract limits or excludes any liability which cannot legally be limited, including but not limited to liability for:
- i) death or personal injury caused by negligence;
- ii) fraud or fraudulent misrepresentation; and
- iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

## **11 TERMINATION**

- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is

remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without affecting any other right or remedy available to it, if the Buyer fails to pay any amount due under the contract on the due date for payment, or becomes subject to any of the events listed in sub-clauses 11.1(b) to 11.1(d), the Seller may, at its sole discretion:

- (a) terminate the Contract with immediate effect by giving written notice to the Customer; or
- (b) suspend the Seller's performance of its obligations under this or any other contract between the Buyer and Seller.

## **12 PROVISION OF SERVICES ON AGREED PREMISES**

12.1. Where Goods are to be installed or Services are to be provided on agreed premises:

- (a) the Buyer shall ensure that all necessary services (such as electricity) and facilities (in each case to the standard required by the Seller) are provided at the Buyer's expense and that the relevant site in all ways complies with the requirements of the Seller and is suitable for the relevant installation or Services (including but not limited to ensuring structural stability);
- (b) the Buyer shall ensure that the place where the Services are to be performed and any fixtures and fittings therein are prepared for the performance of the Services in accordance with the advice and instructions of the Seller and that any items that the Services are not to be performed upon or which may be damaged during performance of the Services are removed prior to commencement of the Services; and
- (c) the Buyer shall provide any assistance or cooperation reasonably requested by the Seller to facilitate the proper performance of the Services.

12.2 The Buyer shall indemnify the Seller against all loss damage or injury whatsoever sustained by the Seller's employees or agents or caused to the Buyer, its servants, agents, visitors, contractors or licensees which occur while the Seller's servants or agents are working at the premises in any way in connection with the performance by the Seller of its obligations under this Contract.

- 12.3 Unless otherwise agreed, the Seller shall deliver thereto the Goods and any materials required or supply the Services and the Seller's employees or agents shall be given full access to the relevant premises. All materials and Goods on site whether fixed or unfixed are at the sole risk of the Buyer as to loss or damage.
- 12.4 Any variation covering work by the Seller's subcontracting agents must be given by the Buyer to the Seller in Writing and no liability is accepted by the Seller for delays or additional costs incurred where instructions are given by the Buyer directly to the Seller's subcontractors or agents.
- 12.5 Unless otherwise agreed in Writing all work to premises where installation of Goods or provision of Services is to take place are to be effected by the Buyer or its authorised agents. All floors shall be flat and level and the location of all wiring or HVAC systems and other services and facilities clearly notified to the Seller in Writing by the Buyer. 10.6 Any variations to Goods or Services and/or further expense to the Seller (eg labour charges) incurred by the Seller as a result of the Buyer's failure to comply with this Condition shall be for the Buyer's account. The Seller shall not be liable for the cost of making good any damage to the said premises howsoever caused by the Seller, its employees or authorised agents or subcontractors.
- 12.6 The Buyer is responsible for complying with all relevant legislation and regulations applicable in the country where the Goods or Services are supplied.

### **13 EXPORT TERMS**

- 13.1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 13.2. Where Goods or Services are supplied for export from the United Kingdom, the following provisions shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply in addition to any other provision of these Conditions (and so that in the event of contradiction these following provisions shall, subject as aforesaid, apply):
- a) the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them;
  - b) In relation to Export Deliveries, the Buyer responsible for obtaining, at the Buyer's own cost such export licences and other consents in relation to the Goods as are required from time to time and, if the Seller so requires, the Buyer shall make those licences and consents available to the Seller prior to shipment of the Goods.
  - c) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for payment of any duties on them.
  - d) The Buyer will inform the Seller of any local legislation or regulations which may impact the Seller's performance under the Contract, prior to

the Seller appropriating the Goods to the Contract by picking them in the Seller's warehouse.

- e) unless otherwise agreed in Writing the Goods shall be delivered f.o.b. the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979; and
- f) the Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. If the Buyer does not so test or attend any testing carried out by the Buyer, the Seller's report or testing shall be accepted by the Buyer and the Seller shall have no liability for any claim in respect of any defect in Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage or loss during transit.

### **14 FORCE MAJEURE**

- 14.1. The Seller shall not be liable under this Agreement wherever and to the extent to which the fulfilment of its obligations is prevented, frustrated, impeded and/or delayed as a consequence of any 'force majeure' and/or fire, explosion, flood, storm, Act of God, pandemic, epidemic, governmental acts, orders or regulations, imposition of tariff(s), trade barrier(s), restrictions, requirements to obtain authorizations, registrations, listings or other administrative procedures by governmental authorities, exchange rate fluctuations, hostilities, civil disturbances, strikes, labour difficulties (whether of the Seller or of third parties), machinery breakdown, inability to obtain necessary materials from usual sources of supply, shortage of transport facilities or delays in transit or any other circumstances whatsoever and howsoever arising (whether or not of a class or kind before mentioned) beyond its reasonable control.
- 14.2 The Seller undertakes to use its reasonable endeavours to overcome any such difficulties, but reserves the right to cancel, suspend or vary its obligations under this Agreement..

### **15 CONSUMER PROTECTION ACT 1987 ("the Act")**

- 15.1 In circumstances where the Seller supplies Goods to the Buyer for incorporation with, or use ancillary to, any composite products to be produced, manufactured, processed or supplied by the Buyer then:
- a) the Buyer will immediately on demand produce for the Seller's inspection copies of all written instructions, information and warnings to be supplied by the Buyer in relation to such composite products provided nevertheless that such inspection or right to inspect shall not of itself constitute the Seller's acceptance or approval of such instructions, information or warnings;
  - b) the Buyer shall indemnify and hold the Seller harmless from and against all losses, claims, proceedings, demands, charges, actions, damages, reasonable costs and expenses and any other liabilities suffered or incurred by the Seller (including any professional or legal expenses) arising out of or in connection with the Act or otherwise relating to or arising from such composite products in circumstances in which the Goods the Seller supplied were either:
    - i) not the defective part of such composite products; or

- (ii) only rendered the composite product defective by reason of the Buyer's act or omission; or
  - (iii) only rendered the composite product defective by reason of instructions or warnings given by the Buyer or another supplier of the composite parts of the composite product or products; or
  - (iv) in accordance with specifications provided by the Buyer.
- 15.2 For the purposes of this condition the word "defective" shall be interpreted in accordance with the definition contained in the Act.
- 15.3 The Buyer acknowledges that the Buyer is under a duty to pass on to the Buyer's customers (where appropriate) all instructions, information and warnings supplied by the Seller with the Goods.

## **16 LOAN EQUIPMENT**

- 16.1 The following provisions apply to all Loan Equipment:
- a) The Loan Equipment remains the property of the Seller at all times. The Buyer will not cover or remove any of the Seller's branding on the Loan Equipment nor any labels or markings as to the Seller's ownership of it.
  - b) The Loan Equipment has been designed for and the Buyer will exclusively use it only with the Goods.
  - c) the Seller 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.
  - d) the Buyer will not allow anyone, other than the Seller's duly authorised representative or someone nominated by that representative, to remove or repair the Loan Equipment.
  - e) in the event that the Buyer ceases to buy Goods for use in the Loan Equipment or should the Buyer use other products in breach of the above, the Seller may remove the Loan Equipment from the Buyer's premises where it was installed and the Buyer's will give us access to enable us to do so as well as such facilities (e.g. electricity) as the Seller may reasonably need to do so.
  - f) the Buyer's 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.
  - g) 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.
  - h) The Buyer's will provide a minimum of 30 days' notice of cancellation to enable us to recover the above equipment.
- 17.3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be effective on the business day of actual receipt or if received otherwise than on a business day, on the next business day.
- 17.4. No failure or delay on the part of the Seller in exercising its rights under the Contract shall constitute a waiver of those rights and a waiver shall only occur on the part of the Seller when a right is specifically waived in Writing by an authorised representative of the Seller and until that occurs the Seller may exercise those rights at any time. Further no failure or delay or waiver by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of any other rights available to that party, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. If any provision proves to be invalid, illegal or unenforceable, the parties shall replace such provision by a valid new one having an effect as close as possible to the original provision.
- 17.6. The Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 17.7 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **17 GENERAL**

- 17.1. The Seller is a member of the group of companies whose holding company is Ecolab Inc, and the Seller may at its sole discretion perform any of its obligations or exercise any of its rights hereunder itself or procure or permit any other member of its group, to do the same, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 17.2. The Seller may assign, novate or otherwise transfer the rights and obligations under the Contract or any part of it or subcontract any of its obligations under the Contract to any person, firm or company. The Buyer shall not be entitled to assign, novate or otherwise transfer the Contract or any part of it without the prior written consent of the Seller.