# Terms and Conditions of Sale • Ecolab Thailand Limited ("Ecolab")

#  Notwithstanding any other contract or document in place including customer supplied purchase order(s), executed contract(s) or otherwise, the Notice and Return Procedure for Goods below is a condition of supply:

# All goods (including chemicals, other consumables and equipment) to be sold which are not provided as part of the Services (as defined below)) have been delivered on the customer’s request and to the site stated in the Contract (as defined below). If this does not comply with your order, please contact customers service at th.customer@ecolab.com within 7 days to assist in returning the goods and to obtain a return authorization notice. Ecolab shall not accept any opened/damaged/tampered items and the returned goods must be in its original packaging accompanied by a copy of Ecolab’s delivery order or invoice. Where the goods delivered are used, kept or consumed, payment in full is required within the payment terms specified. On any return of goods to Ecolab, kindly ensure that a proof of delivery (“POD”) has been obtained by you, specifying the recipient as Ecolab, appropriate delivery address and an authorized Ecolab signature. Where a POD is not supplied by the customer on request, payment in full is required within the payment terms specified. Unauthorized returns shall not be accepted by Ecolab.

# GENERAL

Ecolab shall be responsible for reasonable diligence and care in providing its services and goods, and the customer shall be reasonably diligent in following Ecolab's instructions related to such goods and services. Ecolab shall not be liable for any failure caused by the customer’s failure to follow Ecolab's instructions. The terms and conditions in this agreement are subject to and will be deemed to be replaced by any conflicting provisions in an existing executed written contract between Ecolab and the customer (“**Contract**”).

# BINDING CONTRACT

Ecolab’s offers shall be subject to its written order confirmation which shall constitute the binding contract of sale between Ecolab and the customer. In transactions where written order confirmations are neither customary nor requested by the customer, Ecolab’s invoice shall be considered the binding contract between the Seller and Buyer.

# TERMS

# Standard payment terms are net 30 days of the invoice date and/or following the day of dispatch. Past due invoices are subject to a late fee of 1% per month or the highest interest rate allowable by applicable law. Interest shall start to accrue from the date due for payment. Prices exclude any applicable tax, duties, excise and similar fees. Unless otherwise agreed, goods shall be shipped ex works from Ecolab's facility, and risk of loss shall pass to the customer upon Ecolab's tender of the good or equipment. Title to goods sold shall pass upon delivery to the customer.

# ECOLAB EQUIPMENT

# For Ecolab-owned equipment, transporters and PORTA-FEED® units (a Ecolab trademark), ("Equipment") furnished to the customer on a rental or use basis (as part of the Services), the following applies:

# The Equipment shall remain the sole personal property of Ecolab even if attached to realty. Ecolab may mark the Equipment to indicate its ownership and file a financing statement covering such Equipment. The customer shall provide a suitable location and utilities for the Equipment, and is responsible for applicable personal property or use taxes.

# The customer shall not use the Equipment with any materials or products other than those recommended or approved by Ecolab. The customer shall install and operate the Equipment in accordance with Ecolab's recommendations. Ecolab shall have the right to inspect and service the Equipment during normal business hours. The customer assumes all risk of loss, damage or liability arising from its possession or use of the Equipment, and shall indemnify Ecolab from all such losses, damages or liabilities.

# Empty transporters and PORTA-FEED® units shall be promptly returned to Ecolab. Upon termination of this agreement, the customer, at its expense, shall return all Equipment to Ecolab in the same condition as received, ordinary wear and tear excepted.

# Any software and documentation provided by Ecolab remains the sole and exclusive property of Ecolab and shall be used only for purposes authorized by Ecolab.

# All rental of Equipment shall be subject to the terms and conditions of the Rental of Equipment Agreement.

# LOAN OF EQUIPMENT

# If any equipment item is on loan, the following terms and conditions apply:

# Ecolab offers the use of the equipment items listed in the delivery order with the understanding that the said equipment will remain the property of Ecolab for the entire life of this agreement.

# This agreement is offered in consideration of purchases of products manufactured by Ecolab, subject to policies as outlined in the current price books.

# The customer will be responsible for any damage or loss of the equipment through fire, theft or other means, while in the possession of the customer. Ecolab agrees to maintain the equipment in a constant state of effectiveness to ensure proper function. Hence, the equipment shall be considered ‘like new’ and the loss payable amount shall equal the current list price of the equipment covered by this agreement.

# The customer agrees to notify Ecolab of any change in business ownership or management and/or other disposal of business.

# This agreement may be cancelled at any time by any of the parties hereto, with the equipment being repossessed by an authorized representative of Ecolab.

# PRICE REVISION

# Unless expressly termed as firm prices quoted or contracted by Ecolab, Ecolab may revise prices to cover unforeseen increases in costs. If Ecolab desires to revise prices but is restricted from so doing by reason of any governmental law, regulation, order or action or if the cost basis of prices quoted or contracted as firm prices is altered by reason of any governmental law, regulation, order or action, Ecolab shall have the right to rescind the Contract by written notice to the customer if Ecolab and the customer cannot agree forthwith on an equitable solution concerning the additional cost thus incurred.

# DELIVERY, FORCE MAJEURE AND SHORTAGES

# While Ecolab will make all reasonable efforts to have the goods delivered to the customer on the date agreed between the parties as the date of delivery, Ecolab shall be under no liability whatsoever should delivery not be made on or by this date.

# Neither party shall be liable for any failure or delay in performance (other than payment) which is due, in whole or in part, to any cause of any nature beyond the reasonable control of the party affected including but not limited to acts of God, wars, riots, fires, explosions, accidents, floods, sabotages, inability to obtain fuel, power, raw material, labour, containers or transportation facilities breakage or failure of machinery or apparatus, governmental law, order or action, national defense requirements or in the event of strikes, lockouts or injunctions, any of which events prevent the manufacture or dispatch of a shipment of the goods. If because of any such event, Ecolab is unable to supply the goods or render the services, it shall be exempted to such extent from its obligations hereunder upon giving prompt notice of such event to the customer, but the Contract and this agreement shall otherwise remain in force. If there are product shortages for any reason, Ecolab may allocate the available supply on whatever basis it deems practical.

# WARRANTIES

# Ecolab warrants that (a) its chemical products shall conform to Ecolab's standard product specifications in effect at the time of shipment, (b) its services shall be performed in a good and workmanlike manner, (c) its equipment shall be free from material defects in workmanship and materials for a period of 12 months from the date of shipment, (d) its goods and equipment shall be transferred with good title free of liens and (e) the goods supplied or services rendered shall be of the specifications stated in the Contract but subject always to the warranty period as expressly stipulated in the Contract. Save for these warranties which are further predicated on the customer’s compliance with generally accepted or expressly specified conditions for proper handling and use of the goods, Ecolab makes no warranty whether of merchantability, fitness for a particular purpose or otherwise expressed or implied concerning the goods supplied or services rendered. Further, while any recommendations made by Ecolab concerning the use of the goods are believed to be reliable, Ecolab makes no warranty of the results to be obtained. The customer agrees to inspect the goods supplied or the services rendered hereunder immediately after delivery or performance and to give notice in writing of any claim within thirty (30) days of delivery or performance. Failure to give notice in writing as aforesaid within the specified time constitutes an unqualified acceptance of the goods or services and, a waiver of all claims with respect thereto. The water treatment program does not cover, and Ecolab makes no warranties with respect to, water system biohazards from waterborne pathogens, including but not limited to Legionella bacteria. Ecolab's liability is limited to repair or replacement of defective items, re-performance of non-conforming service, or a refund of or invoice credit for the defective item or non-conforming service.

1. **CONFIDENTIALITY**

The customer shall not: (a) disclose to a third party any non-public information, composition, design, operation or application of Ecolab goods and equipment ("**Proprietary Information**") without the prior written consent of Ecolab; or (b) use the Proprietary Information for any purpose not authorized by Ecolab. The customer shall not be liable for disclosure of information that: (a) is or becomes part of the public domain through no fault of the customer; (b) is disclosed to the customer by a third party having the right to make such disclosure; or (c) is in the possession of the customer at the time of disclosure by Ecolab.

1. **COMPLIANCE WITH LAWS**

The customer shall not resell goods without Ecolab's prior consent, and shall not divert, transship, export or re-export the goods to any country, except in accordance with applicable national and state laws and regulations. The customer is responsible for compliance with all environmental, health and safety regulations regarding its facility, operations, and equipment, including any registrations applicable to use of storage tanks at its facilities.

1. **TERMINATION**

Either party may terminate this agreement if (a) the other party fails to perform a material obligation and (b) such default is not cured within 45 days after written notice of the failure. If the customer fails to make a payment when due or the customer's financial condition becomes unsatisfactory to Ecolab, then Ecolab, at its option, may (a) withhold future performance until the customer cures the default or improves its financial condition to Ecolab's satisfaction; (b) require payment in advance; or (c) terminate this agreement.

1. **MISCELLANEOUS**

# This agreement shall be governed by the laws of Thailand without regard to conflict of law principles. The parties irrevocably agree that the courts of Thailand are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this agreement and that accordingly any proceedings arising out of or in connection with this agreement shall be brought in such courts. The United Nations Convention on Contracts for the International Sale of Goods is inapplicable to this agreement.

# This agreement and the Contract constitute the complete contract between Ecolab and the customer in relation to the goods and services. Unless otherwise agreed to in writing by Ecolab and notwithstanding any terms appearing in documentation provided by or on behalf of the customer the terms appearing herein shall be incorporated by implication into all agreements by Ecolab to supply the customer with goods or services. No customer issued terms and conditions, confirmation, delivery document, payment advice, or subsequent representation (unless agreed in writing) will vary this agreement.

# The failure of Ecolab to exercise or a delay in the exercise of any right, power or privileges available to it shall not operate as a waiver thereof nor the exercise by Ecolab of any other right, power or privilege.

# With respect to matters related to this agreement, each party as indemnitor agrees to hold the other party harmless from damages, claims, liabilities and costs caused by the negligence or misconduct of the indemnitor. Notwithstanding any other clause, neither party will be liable to the other for consequential loss (including lost profit and/or production) or damage howsoever caused arising out of this agreement or any related document or out of the supply, storage or use of the goods. For the avoidance of doubt, in no event shall Ecolab be liable for any consequential, incidental, or other damages resulting from delayed delivery or performance, short shipment, handling, storage, use, imperfection or otherwise of goods supplied as well as from delayed or imperfect services rendered hereunder. This clause survives the termination of this agreement.

# Ecolab may use a subcontractor provided that the subcontractor is acceptable to the customer.

# The Contract shall automatically renew for an additional 12 months unless the customer provides written notice of termination 60 days prior to expiration of the initial term. Fees may be adjusted during such extension.

1. **SERVICES**

“**Services**” means all services (including chemicals and other consumables ("**Service Chemicals**"), and equipment provided as part of the Services) to the extent provided under the Contract, and to which the following shall apply:

# Service Chemicals shall be owned by Ecolab until removed from the storage vessel. The customer shall provide an appropriate storage vessel or location for the Service Chemicals, and after deliver to the customer’s facility, shall be responsible for loss of or damage to any Service Chemicals unless caused by Ecolab's negligence. Ecolab shall have a right to inspect the Service Chemicals and the Equipment.

# Upon termination of the Services, the customer shall purchase all remaining Service Chemicals at the then current price unless the Service Chemicals are in an unopened container returnable under Ecolab's ‘returned material’ policy.

# The fee is applicable to the plant operating conditions supplied by the customer, and is subject to review and revision if there is a change in the load or other uncontrolled water losses.

1. **TRASAR® LICENCE**

Ecolab has one or more patents and related know-how, which pertain to either TRASAR or 3D TRASAR method of use or practice of technology ("**Tracer Technology**"). The customer's purchase of equipment, software and chemicals from Ecolab conveys to the customer a non-assignable and non-transferable express license to practice Tracer Technology that correlates with the equipment, software and chemicals that the customer chooses to purchase for its water treatment facilities; and all or some of the royalty for such license is included in the payments made by the customer for certain equipment, chemicals and software it has agreed to purchase from Ecolab. Ecolab, however, does not prohibit the customer from using purchased equipment and software for non-proprietary technologies. Ecolab grants no other rights expressly, by implication, or by estoppel, or under any other patent rights owned or licensable. If the customer is not willing to accept the limitations of this limited use statement, the customer shall promptly advise Ecolab of such, and Ecolab will accept return of the equipment (within 7 days of receipt of the equipment as per the Notice and Return Procedure) and software in its original, new condition for a full refund. Ecolab will, on request, license the right to practice the Tracer Technology to the customer at its standard royalty rate, using constituents purchased from any non-Ecolab source. Any warranties or performance guarantees granted by Ecolab relating to the Tracer Technology shall be nullified in the event that the customer purchases chemicals, equipment or software from vendors other than Ecolab. Persons wishing a copy of Ecolab's standard license should write to Ecolab.