

ESSECO UK LIMITED

Terms and Conditions for the Supply of Goods Version 3 – 06/2014

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"Business Day"	means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business
"Commencement Date"	has the meaning set out in Clause 2.2
"Conditions"	means these terms and conditions as amended from time to time in accordance with Clause 12.15
"Contract"	means the contract between Esseco and the Customer for the supply of Goods (as specified on the Order) in accordance with these Conditions
"Customer"	means the person or firm who purchases the Goods from Esseco
"Delivery Location"	has the meaning set out in Clause 4.1
"Esseco"	means Esseco UK Limited (registered number 01903619) whose registered office is at Calder Vale Road, Wakefield, West Yorkshire WF1 5PH
"Force Majeure Event"	has the meaning given to it in Clause 12.1
"Goods Specification"	means the standard specification for the Goods provided by Esseco to the Customer
"Goods"	means the goods (or any part of them) set out in the Order
"Intellectual Property Rights"	means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world
"Order"	means the Customer's order for the supply of Goods, as confirmed by Esseco to the Customer after receipt of an order from the Customer
"Payment Period"	means the payment period set out in the order acknowledgement referred to in clause 2.2 and commencing on the date of the relevant invoice

1.2 In these Conditions, the following rules apply:-

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

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- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Esseco issues written acceptance of the Order in the form of an order acknowledgement or (if earlier) Esseco notifies the Customer it is ready to deliver the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**"). The Contract cannot be amended or cancelled save as set out in Clause 10 of these Conditions.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Esseco which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Esseco and any descriptions of the Goods contained in Esseco's catalogues, website 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 or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Notwithstanding Clause 2.5, if the parties agree either on the Order or separately in writing that any of the Incoterms 2010 (or such Incoterms as are in force from time to time) are to apply to this Contract those terms shall apply as set out in the relevant provisions of the Incoterms. In the case of conflict or ambiguity between any provision contained in the Incoterms and any provision contained in this Contract, the provisions in the Incoterms shall take precedence.
- 2.7 Any quotation given by Esseco shall not constitute an offer, and may be amended at any time prior to receipt of an Order based upon such quotation.

3. GOODS

- 3.1 The Goods are described in any applicable Goods Specification.
- 3.2 Esseco reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

- 4.1 Esseco shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after Esseco notifies the Customer that the Goods are ready.

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- 4.2 Unless otherwise agreed, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Esseco shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Esseco with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If Esseco fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Esseco shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Esseco with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to collect, accept or take delivery the Goods at the Delivery Location within three (3) Business Days of Esseco notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Esseco's failure to comply with its obligations under the Contract in respect of the Goods:-
- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Esseco notified the Customer that the Goods were ready; and
- 4.5.2 Esseco shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 Notwithstanding Clause 4.5, if three (3) Business Days after Esseco notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, Esseco may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Customer shall not be entitled to reject the Goods if Esseco delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.8 Esseco may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **QUALITY OF GOODS**
- 5.1 Esseco warrants that:-
- 5.1.1 on delivery the Goods shall:-
- (a) conform in all material respects with their description and the Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out in writing by Esseco.
- 5.2 Subject to Clause 5.3, if:

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- 5.2.1 the Customer gives notice in writing within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within ten (10) days after discovery of the defect or failure that some or all of the Goods do not comply with the warranty set out in Clause 5.1.1;
- 5.2.2 Esseco is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by Esseco) returns such Goods to Esseco's place of business at Esseco's cost,
- Esseco shall, at its sole option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 Esseco shall not be liable for the Goods' failure to comply with the warranty in Clause 5.1.1 if:-
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with Clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow Esseco's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 5.3.3 the Customer alters or repairs such Goods without the written consent of Esseco;
- 5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or
- 5.3.5 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this Clause 5, Esseco shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in Clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Esseco under Clause 5.2.
- 6. TITLE AND RISK**
- 6.1 Unless otherwise agreed, the risk in the Goods shall pass to the Customer as follows:-
- 6.1.1 for Delivery Locations within the United Kingdom, upon completion of delivery; or
- 6.1.2 for Delivery Locations outside of the United Kingdom, in accordance with the terms of shipment.
- 6.2 For the purpose of Clause 6.1, where Goods are delivered to the Customer in a bulk tanker (or other similar method of transport), delivery shall be deemed to occur when the Goods pass from the delivery hose of such bulk tanker into the Customer's storage tank or other such vessel.
- 6.3 Title to the Goods shall not pass to the Customer until Esseco has received payment in full (in cash or cleared funds) for:
- 6.3.1 the Goods; and
- 6.3.2 any other goods that Esseco has supplied to the Customer.
- 6.4 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.4.1 hold the Goods on a fiduciary basis as Esseco's bailee;

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- 6.4.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Esseco's property;
- 6.4.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.4.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Esseco's behalf from the date of delivery;
- 6.4.5 notify Esseco immediately if it becomes subject to any of the events listed in Clause 10.1.1; and
- 6.4.6 give Esseco such information relating to the Goods as Esseco may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 10.1.1, or Esseco reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Esseco may have, the Customer's right to use or resell the Goods shall be revoked and Esseco may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. CHARGES AND PAYMENT

- 7.1 The price for Goods shall be the price quoted by Esseco, or, if no price is quoted, the price set out in Esseco's published price list as at the date of delivery. Unless otherwise agreed between the parties, the price of the Goods is inclusive of all costs and charges of packaging, insurance, transport of the Goods.
- 7.2 Esseco shall invoice the Customer at any time after the Goods are dispatched for delivery to the Customer or at such other time as Esseco may decide at its sole discretion.
- 7.3 The Customer shall pay each invoice submitted by Esseco:
 - 7.3.1 within the Payment Period; and
 - 7.3.2 in full and in cleared funds to a bank account nominated in writing by Esseco, andtime for payment shall be of the essence of the Contract.
- 7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**") or any other relevant local taxes and duties.
- 7.5 Without limiting any other right or remedy of Esseco, if the Customer fails to make any payment due to Esseco under the Contract by the due date for payment ("**Due Date**"), Esseco shall have the right to:
 - 7.5.1 charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Barclays Bank plc base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly; and
 - 7.5.2 suspend all further deliveries until such time as the overdue amount (and any interest thereon in accordance with Clause 7.5.1) is paid to Esseco in full.

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7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Esseco in order to justify withholding payment of any such amount in whole or in part. Esseco may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Esseco to the Customer.

8. CONFIDENTIALITY

A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 8 shall survive termination of the Contract.

9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in these Conditions shall limit or exclude Esseco's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

9.1.5 defective products under the Consumer Protection Act 1987.

9.2 Subject to Clause 9.1:

9.2.1 Esseco shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 Esseco's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise, shall in no circumstances exceed the value of the Goods.

9.3 Save as expressly set out all in this Contract, all implied terms are to the fullest extent permitted by law, excluded from the Contract.

9.4 This Clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Without limiting its other rights or remedies, Esseco may terminate the Contract with immediate effect by giving written notice to the Customer if:

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10.1.1 the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within twenty one (21) days after receipt of notice in writing of the breach; and/or

10.1.2 if any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Customer or if the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the Customer) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Customer or if the Customer ceases or threatens to cease to carry on business.

10.2 Without limiting its other rights or remedies, Esseco may suspend or terminate the Contract:

10.2.1 by giving the Customer no less than one (1) week's written notice; or

10.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, Esseco shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Customer and Esseco if:

10.3.1 the Customer fails to pay any amount due under this Contract by the Due Date; or

10.3.2 the Customer becomes subject to any of the events listed in Clause 10.1.1, or Esseco reasonably believes that the Customer is about to become subject to any of them.

11. **CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

11.1.1 the Customer shall immediately pay to Esseco all of Esseco's outstanding unpaid invoices and interest;

11.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

11.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. **GENERAL**

12.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of Esseco including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Esseco or its subcontractors.

12.2 Esseco shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12.3 If the Force Majeure Event prevents Esseco from providing any of the Goods for more than two (2) weeks, Esseco shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

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- 12.4 Esseco may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 12.5 The Customer shall not, without the prior written consent of Esseco, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.6 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 12.7 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 12.8 This Clause 12.8 shall not apply to the service of any proceedings or other documents in any legal action.
- 12.9 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.10 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 12.11 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.12 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.13 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.14 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.15 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Esseco.
- 12.16 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.