

CUSTOMER TERMS OF SERVICE

Last modified: 18 October 2021

These Customer Terms of Service (the “**Customer Terms**”) describe the rights and responsibilities of Customers when accessing the Lobster Ink Platform and using the Lobster Ink Training Services.

If you are a Customer, these Customer Terms govern your access to the Platform and use of the Training Services.

If you are a User that has been invited to a workspace on the Platform by a Customer, the User Terms of Service (the “**User Terms**”) govern your access to the Platform and use of the Training Services.

“Customer”, “User”, and other defined terms are as set out in section 2 below or within the body of these Customer Terms.

1. Acceptance of the terms of service

These Customer Terms are entered into by and between Customer and Ecolab. Ecolab’s obligations may be carried out by Lobster Ink, a division of Ecolab. These Customer Terms, together with any Other Contracts that apply, together form the binding “**Agreement**” between Customer and Ecolab governing Customer’s access to the Platform and use of the Training Services.

Please read these Customer Terms carefully before you start to use the Platform. **By using the Platform or by ticking a checkbox to accept or agree to these Customer Terms when this option is made available to you, you accept and agree to be bound and abide by the Agreement on behalf of Customer.**

If you do not agree to these Customer Terms, you must not access the Platform or use the Training Services.

Please make sure you have the necessary authority to enter into the Agreement on behalf of Customer before proceeding.

2. Definitions

Capitalized terms shall have the following meanings:

- “**Content**” means all of the content and Courses hosted on the Platform, including but not limited to still images, text, assessment content, video, the Training Media and still images thereof, graphic designs, audio recordings, multimedia programmes and computer programmes and/or software;
- “**Courses**” means the training courses present on the Platform;

- **“Data Processing Agreement”** means the data processing agreement located at <https://lobsterink.docsend.com/view/rabrfgv5z8v8vxsv>;
- **“Customer”** means the organization that you represent in agreeing to the Agreement;
- **“Ecolab”, “we”, or “us”** means Ecolab Inc., its affiliates and subsidiaries, including Lobster Ink, a division of Ecolab;
- **“Online Assessment”** means the testing and assessment services present on the Platform;
- **“Platform”** means the Lobster Ink software and/or Content as a service which is hosted by Ecolab or its hosting providers and which is accessed by Customer and its Users via the internet;
- **“Service Level Agreement”** means the service level agreement located at <https://lobsterink.docsend.com/view/5kt2trp9dwy2ca55>;
- **“Training Services”** means the provision of the Courses and the Online Assessment with the required implementation and support;
- **“Training Media”** means collectively the Courses and the Online Assessment to which Customer and its identified and approved Users will have access to over the term of the Agreement;
- **“Other Contracts”** means other agreements (including terms and conditions) that Customer has entered into with Ecolab in respect of the purchase of goods or services from Ecolab (including those provided by Lobster Ink); and
- **“User(s)”** means the individuals that Customer has invited to its workspace on the Platform and/or to access to the Training Services.

3. Changes to the terms of service

We may revise and update these Customer Terms from time to time in our sole discretion. If we make a material change to these Customer Terms, we will provide Customer with reasonable notice in advance of the change. All changes are effective immediately when we post them. Customer’s continued use of the Platform following the posting of revised Customer Terms means that Customer accepts and agrees to the changes. Customer is expected to check this page from time to time so that Customer is aware of any changes, as they are binding on Customer.

4. Conflicts with other terms and conditions

Customer’s access to the Platform and use of the Training Services may be governed the Other Contracts that Customer has entered into with us. Customer’s access to the Platform and use of the Training Services is subject to the Other Contracts and in the event of any conflict between these Customer Terms and an Other Contract, the terms of the Other Contract will prevail.

5. Fees and payment

As consideration for Ecolab's providing the services that are the subject matter of these Customer Terms, Customer will pay the fees that have been agreed in the applicable Other Contract, or that are agreed with Ecolab at the time of entering into these Customer Terms, or that are agreed with Ecolab at the time of purchasing the services that are the subject matter of these Customer Terms.

6. Term and termination

Customer's access to the Platform and use of the Training Services is valid for the term of the Agreement. The term of the Agreement may be dependent upon the term of applicable Other Contracts. On termination or expiry of all applicable Other Contracts, Ecolab may terminate the Agreement and these Customer Terms.

Ecolab may terminate Customer's access to the Platform and use of the Training Services at any time upon three (3) business days' notice, unless Ecolab has a reasonable belief that Customer's access is not secure and may result in system vulnerability, in which case Ecolab may terminate access immediately to address such concerns.

7. Access

The Training Media and related manuals will be provided to Customer for the term of the Agreement. Customer will use the Training Media for the limited purpose of training the Users and for no other purpose whatsoever. Customer accordingly will not, without limitation, edit, alter, copy, reproduce, transmit, perform, create derivative works of, grant any rights in respect of, publish or disseminate any of the Content in any way whatsoever unless Customer receives the express written consent of Ecolab to do so.

8. Training material and online assessment

The Platform contains the software that will allow Customer to view the Content, access the online course manuals, perform the online assessments, monitor staff performance, create User profiles and store staff assessment information in Customer's workspace, which workspace will be established by Ecolab on the Platform. Ecolab hereby grants to Customer the right to access the Platform and the Content for the term of the Agreement subject to the provisions of the Agreement. Customer must ensure that its Users comply with the Agreement and the User Terms.

Customer will determine who the Users will be and is responsible for User registration on the Platform. Customer will be responsible for the Users' conduct while accessing the Platform and will be liable for any damages, loss or claims howsoever arising from or relating to the use or misuse of, or access to, the Platform by the Users.

Without in any way derogating from the abovementioned, Customer and/or its Users will not in any way whatsoever edit, alter, copy, reproduce, transmit, perform, create derivative works of, grant any rights in respect of, publish, or disseminate the online manuals, the Content or any portion of either; disassemble or reverse engineer the Content or any part thereof; and/or do anything or allow the doing of anything, which may have the effect of circumventing, disabling, damaging or impairing the Platform or the Content or any portion of either and, in particular, the Platform's control or security systems.

The Training Media, related manuals, the Platform and the Content are made available "as is" and Ecolab gives no warranties of any nature whatsoever with regard thereto and/or the use or

misuse thereof by Customer and/or the Users whether relating to fitness for intended purposes, accuracy of the Platform and/or the Content or in any other regard whatsoever.

9. Information usage

Customer agrees that Ecolab may electronically collect, store and use the following of the User's information:

- Personal data (also commonly referred to as personal information or personally identifiable information (PII)) within the meaning of privacy laws applicable to Customer and/or to Ecolab during the term of the Agreement ("**Personal Data**"), which may include name, email address, job role, employee number, and telephone number; and
- Internet usage information, including internet protocol address, the dates and times that the User accesses the Platform, and time spent on the Platform.

With respect to data that may qualify as Personal Data, the Customer shall, in its use of the Training Services provided hereunder, collect, access, use, store, disclose, dispose of, transfer and otherwise process the Personal Data of Customer and its Users in accordance with the requirements of applicable data protection laws and regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of such Personal Data, the means by which Customer acquires such Personal Data, and the means by which Customer or any relevant affiliate of Customer collects, stores, processes and transmits such personal data. Customer shall collect, store, process and transmit Personal Data of Customer and its Users in accordance with the requirements of all applicable laws. Customer agrees to indemnify and hold Ecolab and its affiliates harmless from any claim related to the foregoing.

The information provided by the User may be used by Ecolab to communicate product releases, functionality updates and enhancements, and to track entries, submissions and status in connection with the usage of the Platform.

Ecolab acknowledges and agrees that Customer owns and retains all right, title and interest in and to the data, information and material that it uploads or that results from its use of the Training Services (the "Customer User Data"). Customer acknowledges and agrees that Ecolab owns and retains all right, title and interest in and to the Derived Data. "Derived Data" means (i) Customer User Data that has been processed, anonymized, aggregated and/or manipulated by or on behalf of Ecolab to such a degree that it cannot be identified by visual inspection as originating directly from Customer User Data and cannot be reverse-engineered such that it can be so identified; (ii) usage data and Customer User Data in aggregated form used for security and operations management, to create statistical analyses, for research and development purposes and incorporated into aggregated and anonymized data sets for the purpose of improving and commercializing products, software, technology and services of Ecolab; and (iii) any general information or insight that is derived by or on behalf of Ecolab in connection with the provision of the Training Services.

If Ecolab is processing data regulated by the General Data Protection Regulation 2016/679 of the EU (GDPR), then the terms of the Data Processing Agreement apply. The Data Processing Agreement is entered into between Customer and Ecolab and forms part of the "Agreement" between Customer and Ecolab.

10. Support services

Ecolab will provide Customer with the support services as detailed in the Service Level Agreement.

11. Ownership of intellectual property

It is recorded and agreed that all of the rights in and to all and any intellectual property in the Content and Courses as well as the Platform, Training Media, whether registered or not, vests in Ecolab and nothing contained or implied in the Agreement will derogate from Ecolab's intellectual property rights in any way whatsoever. Ecolab's intellectual property may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited in whole or in part in any way whatsoever, without Ecolab's express prior written consent.

12. Intellectual property indemnity

Intellectual property indemnification

Ecolab shall: (i) defend, or at its option settle, any claim brought against Customer by a third party to the extent it alleges that the Training Services as delivered to Customer and used as authorized herein infringes or misappropriates any U.S. patent, copyright or trade secret of such third party; and (ii) pay any damages awarded in a final judgment, or amounts agreed in a monetary settlement, in any such claim defended by Ecolab, provided that Customer provides Ecolab: (a) prompt written notice of; (b) sole control over the defence and settlement of; and (c) all information and assistance reasonably requested by Ecolab in connection with the defence or settlement of, any such claim. If any such claim is brought or, in Ecolab's judgment may be threatened, Ecolab may, at its sole option and expense: (w) procure for Customer the right to continue to use the applicable Training Services; (x) modify the Training Services to make it non-infringing; (y) replace the Training Services with non-infringing technology having substantially similar capabilities; or (z) if none of the foregoing is commercially practicable, terminate the Agreement, and refund a pro rata portion of unused and pre-paid fees applicable to the services that are subject matter of these Customer Terms (if any) for the outstanding balance of the Agreement's term.

Limitations

Notwithstanding the first paragraph of this section 12, Ecolab will have no liability to Customer for any claim arising out of or based upon: (i) use of the Training Services in combination with software, products or services not provided by Ecolab; (ii) any modification of the Training Services not made or authorized in writing by Ecolab; (iii) Customer's failure to use the Training Services in accordance with the Agreement or documentation provided by Ecolab, or otherwise using the Training Services for purposes for which it was not designed or intended; or (iv) use of any specified release of the Training Services after Ecolab notifies Customer that continued use of such release may subject Customer to a claim of infringement, if Ecolab provides a replacement release.

Disclaimer

THE FOREGOING PROVISIONS OF THIS SECTION 12 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ECOLAB, AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL

PROPERTY RIGHTS BY THE PLATFORM OR TRAINING SERVICES OR ANY PART THEREOF.

Indemnification by Customer

Customer shall: (i) defend, or at its option settle, any claim brought against Ecolab by a third party relating to (a) any data provided or made available by or on behalf of Customer and (b) Customer's use of the Training Services other than pursuant to the Agreement; and (ii) pay any damages awarded in a final judgment, or amounts agreed in a monetary settlement, in any such claim defended by Customer; provided that Ecolab provides Customer: (x) prompt written notice of; (y) sole control over the defence and settlement of; and (z) all information and assistance reasonably requested by Customer in connection with the defence or settlement of, any such claim.

13. Limitation of liability

Except for Ecolab's indemnification obligations outlined in the first paragraph of section 12, Ecolab's total liability related to the subject matter of the Agreement, whether based on negligence, breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total fees actually paid by Customer in respect of the services that are subject matter of these Customer Terms (if any) to which such liability is connected or relates.

14. Warranty disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT OR THESE CUSTOMER TERMS, THE PLATFORM, TRAINING SERVICES AND SUPPORT ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. ECOLAB HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM CONDUCT OR COURSE OF DEALING. ECOLAB DOES NOT WARRANT THAT THE TRAINING SERVICES WILL BE ERROR-FREE OR WILL WORK WITHOUT INTERRUPTIONS. USE OF THE TRAINING SERVICES REQUIRES ACCESS TO THE INTERNET WITH CUSTOMER ASSUMING ALL RISKS INHERENT IN SUCH ACCESS.

15. Governing law and jurisdiction

All matters relating to these Customer Terms and Customer's access to the Platform and use of the Training Services, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles relating to conflicts of law.

Any legal suit, action, or proceeding arising out of, or related to, these Customer Terms and Customer's access to the Platform and use of the Training Services shall be instituted exclusively in the courts of the State of New York. Customer waives any and all objections to the exercise of jurisdiction over Customer by such courts and to venue in such courts.

16. Limitation on time to file claims

ANY CAUSE OF ACTION OR CLAIM CUSTOMER MAY HAVE ARISING OUT OF OR RELATING TO THESE CUSTOMER TERMS OR THE PLATFORM OR TRAINING SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION OCCURS; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

17. Waiver and severability

No waiver by Ecolab of any term or condition set out in these Customer Terms shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of Ecolab to assert a right or provision under these Customer Terms shall not constitute a waiver of such right or provision.

If any provision of these Customer Terms is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Customer Terms will continue in full force and effect.

18. Survival

On termination of these Customer Terms, the following sections along with this section shall continue in force: sections 2, 4, 9 and 11 – 20.

19. Entire agreement

The Agreement, which incorporates these Customer Terms and the applicable Other Contracts, constitute the sole and entire agreement between Customer and Ecolab regarding Customer's access to the Platform and use of the Training Services, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding Customers access to the Platform and use of the Training Services.

20. Registered office

The Platform and the Training Services are operated by Ecolab Inc. whose registered office is at 1 Ecolab Place, St. Paul, Minnesota 55102, USA.