



Application to  
become an Evolution  
Sorbent Products (ESP)  
Distributor

**To:**

Evolution Sorbent Products Canada Inc.  
36008 Laird Road, Unit 4, Mississauga, Ontario, L5L 6A7

Credit Manager

Tel: 905-670-5401

Please complete and return this form to [casales@espsorbents.com](mailto:casales@espsorbents.com)

**Credit Application**

**From:**

**Business seeking to become an ESP Distributor**

Name:	<input type="text"/>	Postal Code:	<input type="text"/>
Address:	<input type="text"/>	E-mail:	<input type="text"/>
City:	<input type="text"/>	Telephone:	<input type="text"/>
Province:	<input type="text"/>	Fax:	<input type="text"/>

**Names/Addresses of Individuals, Partners or Corporate Officers**

Name:	<input type="text"/>
Title:	<input type="text"/>
Address:	<input type="text"/>
City:	<input type="text"/>
Province:	<input type="text"/>
Postal Code:	<input type="text"/>
E-mail:	<input type="text"/>
Telephone:	<input type="text"/>
Fax:	<input type="text"/>
Name:	<input type="text"/>
Title:	<input type="text"/>
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City:	<input type="text"/>
Province:	<input type="text"/>
Postal Code:	<input type="text"/>
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Name:	<input type="text"/>
Title:	<input type="text"/>
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City:	<input type="text"/>
Province:	<input type="text"/>
Postal Code:	<input type="text"/>
E-mail:	<input type="text"/>
Telephone:	<input type="text"/>
Fax:	<input type="text"/>

**Business Type**

Sole Proprietor  How long in business - Years:

Partnership  Months:

Corporation  D&B number:

**Bank Reference**

Bank Name:

Account No:

Contact:

Title:

Telephone:

**Trade Reference**

Name:

Title:

Company:

Address:

Telephone:

**Trade Reference**

Name:

Title:

Company:

Address:

Telephone:

The information submitted here is for the sole purpose of opening an account and I hereby certify the information to be true

Signature:

Name printed:

Title:

Date:

# Terms and Conditions



## Terms:

30 days NET

## Conditions:

Pricing is subject to change without notice

## Taxes:

Taxes extra

## Freight:

F.O.B. Mississauga, ON

## Returns:

No product may be returned without prior authorization from ESP Canada

ESP Terms and Conditions for Distributors:

### 1. Appointment of Distributor

**1.1 Appointment.** ESP Canada appoints the Distributor as its distributor with the non-exclusive right to market and sell the Products (as defined in section 15 below) in the Sales Territory (as defined in section 15 below) for the term of this Agreement commencing on the date first set out above.

**1.2 Non-Exclusivity.** The Distributor acknowledges that ESP Canada may appoint other Distributors within the Sales Territory, and may make direct sales to customers on its own behalf within the Sales Territory.

**1.3 Acceptance.** The Distributor accepts the appointment made in the previous sections and agrees to purchase Products from the Distributor for resale, in accordance with the terms and conditions of this Agreement.

**1.4 Future Changes to Products.** ESP Canada, at its sole discretion, may improve, modify, discontinue or replace any or all of the Products or services at any time without incurring liability of any kind to Distributor or its customers. ESP Canada has the right to modify the Sales Territory if, in the unfettered discretion of ESP Canada, Distributor has failed to develop the maximum volume of sales of the Products therein.

### 2. Distributor's Obligations.

**2.1 Best Efforts.** Distributor at its sole expense shall use its best efforts to promote actively and to obtain maximum sales of the Products within the Sales Territory by, among other things, regularly visiting existing and prospective customers therein. Distributor shall maintain an adequate and properly trained sales force to discharge its obligations hereunder and to effectively promote and sell the Products.

**2.2 Knowledge of Products.** Distributor shall be knowledgeable and fully aware of the proper uses, applications and limits of operation of the Products. Distributor shall become, and shall cause its personnel to become, familiar with all instructions published by ESP Canada for the use, application and operation of the Products. In promoting sales of the Products, Distributor shall exercise its informed independent judgment as to whether the Products will satisfy its customers' needs.

**2.3 Advertising.** Distributor agrees to engage in such advertising and publicity efforts as are necessary to promote the maximum sale of the

Products in the Sales Territory. Distributor shall adhere to the sales and advertising policies of ESP Canada as may be expressed in writing from time to time. Distributor is prohibited from advertising outside the Sales Territory other than for internet advertising or other spill-over so long as the target of the advertisement is not outside the Sales Territory.

**2.4 Prohibition on Sales Outside the Sales Territory.** The Distributor recognizes that the Products sold to the Distributor are to be resold or distributed by it in the Sales Territory only, and nowhere other than the Sales Territory. Neither the Distributor nor any party acting on its behalf shall export, or otherwise distribute or sell Products in any other country or place outside the Sales Territory. Any violation of this section shall be conclusively deemed to be a material breach of this Agreement.

**2.5 Goodwill.** Distributor shall maintain and uphold the reputation and goodwill of ESP Canada and shall avoid any sales policies, trade practices or advertising that would, in ESP Canada opinion, be injurious to the reputation and goodwill of ESP Canada.

**2.6 Indemnification.** Distributor shall indemnify, defend and hold ESP Canada harmless from and against any and all claims, demands, liabilities, judgments, costs and expenses of any nature whatsoever, including legal costs on a substantial indemnity basis, arising, directly or indirectly, from or out of, (i) the internal operation of Distributor's business, (ii) the breach by Distributor of any of the terms of this Agreement; (iii) the negligence or other wrongful action or conduct of the Distributor; and (iv) any statement, conduct or activity by Distributor which is not authorized by ESP Canada.

**2.7 Insurance.** For the Term of this Agreement and for not less than two (2) years following the expiration or termination of the Agreement, the Distributor shall maintain insurance policies with coverage for claims or suits based upon commercial general liability, and liability for personal injury, wrongful death, and property damage arising out of the manufacture, sale or use of the Products in the Territory in an amount agreeable to Centura. The Distributor shall cause such insurance policy to be endorsed and enforced from the Commencement Date, to name ESP Canada and its officers, directors, employees, and agents as additional insured Persons under such policies of insurance. The policies shall stipulate that the required coverage shall not be reduced or cancelled without sixty (60) days prior written notice having been provided to ESP Canada in order to permit ESP Canada to take appropriate steps to avoid such reduction or cancellation. The Distributor shall provide evidence of such insurance coverage to ESP Canada within thirty (30) days of the Commencement Date, and immediately upon each and every

renewal or replacement of every such policy.

**2.8 Trade Secrets, Confidential Information and Trademarks.** Distributor acknowledges that it may or will receive sales, technical, research and other information from ESP Canada (including information regarding pricing, delivery dates and customers), all of which may include trade secrets and ideas and other information which is the special, valuable and confidential property of ESP Canada ("Confidential Information").

Distributor agrees that it will not without the prior express written consent of ESP Canada reveal to any Person any Confidential Information. The duty not to disclose Confidential Information shall survive the termination of this Agreement. Distributor acknowledges and shall not contest ESP Canada's sole ownership and uncontested right, title and interest in and to all trade names, trademarks, insignia and/or slogans owned or adapted by ESP Canada, and all uses of such trade names, trademarks, insignia and/or slogans by Distributor shall inure to the benefit of ESP Canada.

Distributor shall not infringe, interfere with or use without authorization from ESP Canada any trademarks, trade names, trade designations, patents or other proprietary rights of ESP Canada and shall not take any action, or assist others to take any action, to the detriment of ESP Canada's interest therein, whether during or after the term of this Agreement. Distributor shall not effect or permit the removal or alteration of any patent numbers, trade names or trademarks, notices, name plates or serial numbers affixed to any of the Products.

**2.9 Use of Trade-Marks on Products and Packaging.** The Distributor shall not use any trade-mark on any Product, or apply any trade-mark to the packaging, labeling, advertising or promotional material used on or in conjunction with the sale of Products other than those specified by or agreed to in writing by ESP Canada.

### **3. Prices.**

Prices, terms and discounts applying to all transactions between the parties hereto shall be those established by ESP Canada from time to time. The prices in effect as of the date of this Agreement are as set out in Schedule "A" attached. All prices are in Canadian Dollars exclusive of applicable taxes. ESP Canada reserves the right to change its prices, terms and discounts at any time upon 30 days' written notice to Distributor. Firm orders received by ESP Canada during the 30 day notice period shall be completed at the existing price, provided that the aggregate amount of such orders is within the credit limit established by ESP Canada for Distributor.

### **4. Orders and Deliveries.**

**4.1 Purchase Orders.** All requests to purchase Products shall be in the form of written purchase orders delivered by the Distributor to ESP Canada, signed by an authorized representative of the Distributor.

**4.2 Acceptance of Orders.** All purchase orders shall be subject to acceptance by ESP Canada. ESP Canada shall not be bound by the terms of any purchase order which it has not accepted in writing. ESP Canada reserves the right to reject any purchase order in its sole discretion. In the event that the Distributor is in material default under this Agreement, ESP Canada may revoke its acceptance of any outstanding purchase order for Products which have not been delivered.

**4.3 Delivery of Products.** ESP Canada shall endeavour to fill accepted purchase orders as promptly as practicable, subject to the provisions of this Agreement.

**4.4 Title and Risk of Loss.** Each shipment of the Products by ESP Canada to Distributor shall be F.O.B. shipping point. Distributor shall pay all costs of freight, duty, customs, insurance and any other charges associated with the shipment of the Products or parts (including any special delivery requirements of Distributor). Title to each such shipment passes to Distributor on the date of delivery to the carrier and Distributor shall assume all risk of loss or damage, including damage in transit. Orders for special non-stock items/models and/or special quantities, including build deviations, cannot be cancelled or returned.

### **5. Terms of Payment; Default.**

**5.1 Delivery of Invoices.** ESP Canada shall be entitled to deliver invoices for the Products upon delivery of accepted orders.

**5.2 Terms of Payment.** Distributor agrees to pay ESP Canada the full invoice price (together with packaging, freight, express or other transportation charges and taxes) for the Products within 30 days after the date of ESP Canada invoice to Distributor. In some cases, an advance deposit for orders of the Products may be required to be paid by Distributor. ESP Canada will notify Distributor in writing when any such deposit will be required. Most major credit cards are accepted by ESP Canada. All applicable taxes are the responsibility of the Distributor.

**5.3 Credit Limit.** The Distributor's credit limit will be set by ESP Canada upon application by the Distributor and authorization by ESP Canada. ESP Canada reserves the right not to accept further orders and/or withhold further shipments until any outstanding credit balance is paid, regardless of whether the payments are due under the terms of outstanding invoices.

**5.4 Default.** If Distributor fails to pay any invoice of ESP Canada when it becomes due, in addition to any and all other rights and remedies it may have against Distributor hereunder or otherwise, ESP Canada may decline to make further deliveries under this Agreement until such default and other defaults in payment have been cured. If any such default shall continue for a period of 30 days, (i) the entire amount owing to ESP Canada together with all accrued interest shall become immediately due and payable, without any further notice to or demand upon Distributor, all of which is hereby waived, and (ii) ESP Canada may terminate this Agreement upon ten days' written notice to Distributor. All amounts not paid within 30 days of the invoice date or when due shall bear interest at a rate of 1.5% per month (18% per annum) until paid. Distributor also agrees to pay all costs, including legal costs on a substantial indemnity basis, paid or incurred by ESP Canada in collecting any unpaid amounts from Distributor or enforcing this Agreement.

**5.5 Returns.** The Distributor may return Products which are free from defects and which remain in their original packaging, at the Distributor's cost including freight and a 15% restocking charge payable to ESP Canada, unless otherwise agreed between ESP Canada and the Distributor.

**5.6 Defective Products.** Products purchased by the Distributor which the Distributor believes are defective may be returned to ESP Canada for inspection, at ESP Canada's cost. ESP Canada will credit the Distributor's account or refund the purchase price if already paid by the Distributor, if ESP Canada determines that the returned Products are defective. If ESP Canada determines that the products are not defective, the Distributor shall reimburse ESP Canada for the said shipping costs.

### **6. Seller's Support Obligations.**

Promotional Literature. ESP Canada agrees to provide Distributor with literature, advertisements and other promotional documents concerning the Products without charge to Distributor. The amount, type and frequency of distribution of such literature, advertisement and documentation shall be determined by ESP Canada in its sole discretion.

### **7. Unavailability and Delays.**

Unavailability and/or Delays. ESP Canada shall not be liable to Distributor or any other party for: (i) ESP Canada's inability to supply any particular type or quantity of the Products or (ii) ESP Canada's delay in delivery of Products due to any cause beyond its control, including a demand for the Products and other products manufactured by ESP Canada which exceeds ESP Canada's ability to supply them, earthquake, fire, accident, flood, storm, other acts of God, riot, war, rebellion, strike, lockout or other labor disturbances, national or international emergencies, failure to secure materials or equipment from usual sources of supply, failure of carriers to furnish transportation, government rules, regulations, acts, orders, restrictions or other requirements or any other cause or causes of like or different nature. No such inability to deliver or delay in delivery shall invalidate any other provision of this Agreement.

### **8. Resale.**

Except as otherwise set out in this Agreement, the Distributor shall be free to resell or otherwise deal in the Products for such prices and upon such terms and conditions as Distributor may deem to be appropriate in its sole discretion, expressly provided that at all times the final end-user of the products is located within the Sales Territory. Distributor shall not sell any products to any Person which distributor knows or has a reasonable basis to believe intends to cause the products to be used outside the Sales Territory.

ESP Canada shall have no liability in connection with any such resale or other dealings, and Distributor shall hold ESP Canada harmless and indemnify and defend ESP Canada from and against any all liability which may arise or result from any such dealings.

## 9. Effective Date; Termination.

This Agreement shall be effective as of the date of execution by the parties hereto and shall continue until terminated by either party upon 30 days' written notice to the other party. Notice of termination shall be sent by courier or registered mail to the address specified in in the first paragraph of this Agreement. The date of mailing shall be the date of notice. During said 30 day notice period, ESP Canada shall fill any pending orders, and all orders received from Distributor during said period, provided that (i) the amount of such orders does not exceed in aggregate the credit limit established for Distributor, (ii) such orders are prepaid, or (iii) such orders are shipped on a C.O.D. basis. Notwithstanding the foregoing, this Agreement shall terminate immediately upon delivery of written notice from ESP Canada in the event that Distributor commits a material breach of this Agreement; ceases to function as a going concern; makes an assignment for the benefit of or enters into any arrangement with its creditors; becomes insolvent or takes advantage of any bankruptcy, insolvency or similar law; or suffers an involuntary petition in bankruptcy, an application for liquidation or judicial management or the appointment of a receiver to be filed against it and such petition or application is not dismissed within ten days after its filing. The rights of termination set out above are without prejudice to any other remedies to which ESP Canada may be entitled at law, in equity, or otherwise under this Agreement. All indebtedness from Distributor to ESP Canada shall immediately become due and payable without notice or demand upon the termination of this Agreement. Upon termination of this Agreement, the Distributor shall remove and discontinue the use of all signs, advertising and other material referring to ESP Canada or the Products and shall otherwise refrain from any conduct that would be likely to cause the public or others to believe that Distributor is still operating under this Agreement.

THE TERMINATION BY ESP CANADA OF THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES WHATSOEVER CONSTITUTE GROUNDS FOR A CLAIM BY DISTRIBUTOR FOR COMPENSATION, REIMBURSEMENT, DAMAGES OR ANY OTHER AWARD RELATING TO PROSPECTIVE PROFITS ON SALES OR ANTICIPATED SALES OR EXPENDITURES, INVESTMENTS OR COMMITMENTS MADE IN CONNECTION THEREWITH, FOR THE ESTABLISHMENT, DEVELOPMENT MAINTENANCE OF THE BUSINESS OR GOODWILL OF ESP CANADA OR DISTRIBUTOR, OR ANY OTHER CAUSE OR THING WHATSOEVER. FURTHERMORE, DISTRIBUTOR AGREES THAT IT SHALL HAVE NO CLAIM FOR ANY OTHER RELIEF AT LAW OR EQUITY BY REASON OF TERMINATION BY ESP CANADA OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## 10. Notices.

Except as otherwise set forth herein, any communication provided or permitted hereunder shall be in writing and shall be deemed duly given or made if delivered in person or sent by Canadian registered mail, return receipt requested, postage prepaid, or by overnight mail, addressed to the party for which it is intended at its address. Each party's address is contained in the first paragraph to this Agreement.

## 11. Miscellaneous.

**11.1 Miscellaneous.** This Agreement (including any provision hereof and any rights of the parties hereunder): (a) may be amended, waived or terminated only by a writing signed by ESP Canada; (b) may not be assigned, pledged or otherwise transferred by the Distributor, whether by operation of law or otherwise, without the prior written consent of ESP Canada (furthermore, Distributor shall not appoint any sub-distributors, dealers, representatives or agents unless such appointment is expressly and previously authorized in writing by ESP Canada); (c) may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument; (d) contains the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes and cancels all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions; (e) shall be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario without giving effect to any conflict of laws rules; and (f) shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. The waiver by a party of any breach or violation of any provision of this Agreement shall not operate or be construed

a waiver of any subsequent breach or violation hereof. Distributor represents and warrants that the execution, delivery and performance of this Agreement are within Distributor's powers, have been duly authorized, are not in contravention of any law or the terms of its articles of incorporation, by-laws or governing articles, or of any indenture, agreement or undertaking to which Distributor is a party or by which it or any of its properties may be bound.

**11.2 Severability.** In the event that any part, article, paragraph, sentence or clause of this Agreement shall be held to be indefinite, invalid, illegal or otherwise unenforceable, the entire Agreement shall not fail, but the unenforceable, illegal, invalid or indefinite provision shall be severed from the remainder of this Agreement, which shall continue in full force and effect, provided that the severance does not materially alter the scope, meaning and intent of the Agreement to the substantial benefit or detriment of either Party.

**11.3 Independent Contractors.** Nothing contained in this Agreement shall be deemed to constitute either Party as the partner, agent or legal representative of the other Party, or to create any fiduciary relationship between them. Each Party is an independent contractor. Neither Party has any authority, express or implied, to act on behalf of, or in the name of the other Party, to incur any liability on behalf of the other Party, to enter into any contract or pledge the credit of the other Party, or to bind it in any manner whatsoever. In all correspondence, commercial documents and dealings related directly or indirectly to the Products, the Distributor shall clearly indicate that it is acting only as a distributor.

## 12. Interpretation

**12.1 Definitions.** In this Agreement the following terms shall have the following meanings:

"Agreement" means this Distribution Agreement and all written agreements signed by both Parties which amend, supplement or confirm this Distribution Agreement.

"Parties" means ESP Canada and the Distributor, and "Party" means either one of them.

"Person" includes any natural person, sole proprietorship, corporation, partnership, trust, body corporate, a natural person in his or her capacity as trustee, executor, administrator or other legal representative, or other entity or association.

"Products" means the products listed in Schedule "A", as may be amended from time to time in accordance with the provisions of this Agreement.

"Sales Territory" means the geographical territory described in Schedule "B".

**12.2 Extended Meanings.** In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation" and "include" means "include without limitation".

**12.3 Article and Section Headings.** Article and Section headings contained in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the content of any Article or Section, and shall not be considered to be part of this Agreement.