

BRENNTAG UK LIMITED (PART OF THE BRENNTAG GROUP)
GENERAL CONDITIONS OF SALE
August 2020 Edition

The Buyer's attention is drawn to the limitations of liability contained in this Agreement and in particular to the provisions of Clause 14 below. The Buyer's attention is also drawn to the provisions of Clause 18.1 which require the Buyer to examine the Goods promptly after delivery.

1. **DEFINITIONS**

In these Conditions:

- 1.1 **"Brenntag"** means the Brenntag Group company referred to at the beginning of the Order Acknowledgement and if none then Brenntag UK Limited (registered in England under number 05262170) whose registered office is at Alpha House, Lawnswood Business Park, Redvers Close, Leeds, West Yorkshire, LS16 6QY.
- 1.2 **"Ancillary Services"** means services necessary for and ancillary to the delivery of Goods including without limitation Pump Over as defined in paragraph 1.10 below.
- 1.3 **"Buyer"** means any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Goods.
- 1.4 **"Contract"** means the particular individual contract for the supply of the Goods and any Ancillary Services by Brenntag to the Buyer.
- 1.5 **"Goods"** means the goods or materials supplied or sold by Brenntag to the Buyer as specified in the Order Acknowledgement.
- 1.6 **"Incoterms"** means Incoterms 2010 as published by the International Chamber of Commerce in 2010 or such other edition in force at the date when the Contract is made.
- 1.7 **"Intellectual Property"** means patents, registered and unregistered trademarks, registered designs, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up, know how, domain names, inventions, service marks, and database rights and like rights wherever situated in the world.
- 1.8 **"Order"** means an order placed for the Goods.
- 1.9 **"Order Acknowledgement"** means the document entitled Order Acknowledgement generated by Brenntag and sent by post, fax or e-mail by Brenntag to the Buyer.
- 1.10 **"Pump Over"** means the transfer of bulk fluids from Brenntag's transport into the Buyer's storage facilities.
- 1.11 **"REACH"** means European Union Regulation 1907/2006 on the Registration Evaluation, Authorisation and Restriction of Chemicals.
- 1.12 **"REACH Compliance"** means in relation to Goods, compliance with the requirements of REACH and "REACH Compliant" shall be construed accordingly.
- 1.13 **"Safety Legislation"** means the Health and Safety at Work etc Act 1974, the Consumer Protection Act 1987 and all regulations thereunder, the General Product Safety Regulations 1994 and all other legislation from time to time (including subordinate legislation and European Union and European Economic Area legislation to the effect that it has direct effect in member states) imposing legal requirements with respect to the safety of Goods, the handling, transportation, storage or disposal of Goods or goods incorporating the Goods, and the health and safety of the users of the Goods.
- 1.14 **"Special Conditions"** means such additional terms agreed from time to time in writing between Brenntag and the Buyer.
- 1.15 **"Time of Delivery"** has the meaning given in Clause 7.5, 7.6, 7.7, 7.8 or 7.9 as the case may be.
- 1.16 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.17 To the extent of any conflict between these Conditions and the Special Conditions, the Special Conditions shall prevail.
- 1.18 Reference to any Clause is to a clause of these Conditions.
- 1.19 In this document and in any Special Conditions:-
- 1.19.1 the headings are for convenience only and shall not affect the interpretation of this document or those Special Conditions;
- 1.19.2 the use of the plural shall include the singular and the use of the singular shall include the plural;
2. **APPLICABILITY OF TERMS**
- 2.1 Unless otherwise expressly agreed in writing by Brenntag every Contract shall incorporate and be governed in all respects by these Conditions and any Special Conditions which shall prevail over any contractual provisions proffered by the Buyer in any correspondence, Order or other documentation, which shall have no application to the Contract unless otherwise agreed in writing by Brenntag. The Buyer agrees that no actions taken by Brenntag shall be interpreted as Brenntag accepting any contractual provisions proffered by the Buyer.
- 2.2 Brenntag's quotation is not to be taken as an offer and no Contract shall take effect unless and until an Order Acknowledgement has been despatched by Brenntag to the Buyer.
- 2.3 Brenntag will accept no responsibility whatsoever for any error or omission in the transmission of the Buyer's Order.
- 2.4 Brenntag shall be entitled to rely in all respects and in all circumstances on the contents of the Order Acknowledgement as stating the quantity and grade of the Goods that are to be supplied. Accordingly, it shall be the Buyer's sole responsibility to check the Order Acknowledgement and to notify Brenntag forthwith after the receipt of the same where the Goods are not properly stated in the Order Acknowledgement.
- 2.5 Where there is a conflict between the Order Acknowledgement and any quotation or estimate that

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Brenntag may have given, the Order Acknowledgement shall always prevail.

2.6 These Conditions shall apply to any services that Brenntag supplies which are ancillary to the supply of the Goods to the maximum extent feasible.

3. PUBLICATIONS AND REPRESENTATIONS

3.1 All descriptions, illustrations and information contained in:-

(a) Brenntag's catalogues, website, price lists, advertising matter and other publications;

(b) labels attached or affixed to Brenntag's containers and packaging; or

(c) any other collateral item relating to the Goods;

shall be regarded as approximate only and are to present merely a general idea of the goods described in them and shall not form part of the Contract or be deemed to import any warranty regarding the Goods, unless and to the extent that the contrary is expressly agreed in writing by Brenntag.

3.2 Each of the parties acknowledges that it is not entering into the Contract in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in the Contract and the documents referred to in it) made by or on behalf of any other party before the execution of the Contract. Each of the parties waives all rights and remedies which, but for this Clause, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance, provided that nothing in this Clause 3.2 shall limit or exclude any liability for fraud.

4. PRICES

4.1 Save as otherwise agreed in writing by Brenntag or as indicated in the Order Acknowledgement or any Special Conditions, the price of the Goods will be that prevailing at the Time of Delivery, stated as a price in sterling per tonne, litre or kilogram as appropriate and shall exclude transportation, insurance, delivery (including Pump Over and any inspections required), container charges and unloading, which shall be charged separately (if applicable) and shown separately on Brenntag's invoice.

4.2 Save as expressly stated otherwise by Brenntag in writing, prices quoted by Brenntag are exclusive of VAT, which Brenntag shall add at the appropriate prevailing rate.

4.3 Brenntag shall be entitled to charge the Buyer interest on any sums paid late under a Contract from the due date until the date of payment and claim compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 (as amended from time to time). Such interest shall be calculated on a daily basis after as well as before any judgment. In addition the Buyer will reimburse all costs and expenses, including but not limited to legal expenses incurred in the collection of any overdue amount.

4.4 Brenntag shall notify the Buyer of any increase in the price of the Goods. The Buyer may terminate the Contract by giving notice to Brenntag promptly after receipt of any such notice. Where the Buyer does not terminate the Contract promptly after receipt of any such notice and in any event twenty four (24) hours before the time that the Goods are scheduled to leave Brenntag's premises, the Buyer shall be bound to accept the delivery of the Goods at the new price.

5. RESERVATION OF TITLE – RISK AND PROPERTY

5.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the Time of Delivery.

5.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until Brenntag has received in cash or cleared funds payment in full for:-

(a) the Goods; and

(b) any other goods or services that Brenntag has supplied to the Buyer.

5.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Brenntag's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as Brenntag's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

5.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in separate identifiable existence and have not been resold) Brenntag shall be entitled at any time to require the Buyer to deliver up the Goods to Brenntag 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.

5.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Brenntag, but if the Buyer does so, all monies owing by the Buyer to Brenntag shall (without prejudice to any other right or remedy of Brenntag) forthwith become due and payable.

6. PAYMENT

6.1 Brenntag shall be entitled to submit an invoice to the Buyer at any time on or after the Time of Delivery. Upon written request by the Buyer Brenntag may agree to submit a consolidated invoice to the Buyer. If used each consolidated invoice will quote the relevant Order numbers.

6.2 The Buyer shall pay Brenntag's invoice in full and in cleared funds by the 20th day of the month following the month in which the invoice is issued by Brenntag and time of payment shall be of the essence of the Contract.

6.3 Notwithstanding the provisions of Clauses 6.1 and 6.2 Brenntag reserves the right (in Brenntag's absolute discretion) to require payment in full for the Goods on or before the Time of Delivery or otherwise to change any credit facility from time to time given by Brenntag.

6.4 If the Buyer disputes any invoice or other request for payment, the Buyer shall immediately notify Brenntag in writing giving its reasons why. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Brenntag shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.

6.5 Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in Clause 6.2. If part of a consolidated invoice is disputed, the undisputed amounts shall be paid on the due date as set out in Clause 6.2. The Buyer may not use a dispute over

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- part of a consolidated invoice to withhold payment of the full amount of the consolidated invoice.
- 6.6 In relation to payments disputed in good faith, interest under this Clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 6.7 The Buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been admitted by Brenntag in writing.
- 6.8 In the event that any invoice is overdue or the Buyer becomes subject to any of the events in Clause 12.1 then:-
- 6.8.1 all outstanding invoices will fall due for immediate payment whether or not the payment terms have been exceeded and the full amount outstanding shall become due; and
- 6.8.2 Brenntag reserves the right in its absolute discretion to cancel any existing contracts or to suspend delivery of further Goods without liability until the outstanding invoice[s] are settled.
- 6.9 In the event that the Buyer makes an overpayment for whatever reason, such overpayment will be notified to the Buyer in the statement of account issued by Brenntag over a period of twelve (12) months starting from the month of the overpayment, once discovered by Brenntag or notified by the Buyer. The Buyer shall have the right to request that the overpayment(s) are used as credit in relation to later Orders or that the overpayment(s) are returned to the Buyer in which case the provisions of Clause 6.10 will apply. Any requests under this Clause 6.9 shall be submitted in writing and shall be subject to agreement from Brenntag.
- 6.10 In the event of a request from the Buyer that an overpayment is refunded, Brenntag will only issue a refund relating to the overpayment sum provided there are no other monies outstanding at the time the overpayment refund is requested. If there are any monies past due for payment Brenntag shall be entitled to deduct such monies from the refund. No interest will be payable. The refund for the overpayment:-
- 6.10.1 where the request is made within 6 months of the overpayment will be less a £20 administration fee and any bank charges;
- 6.10.2 where the request is made more than 6 months after the overpayment will be less a £50 administration fee and any bank charges.
7. **DELIVERY**
- 7.1 Where Brenntag agrees or states a specified delivery date, Brenntag shall use reasonable endeavours to deliver on or before the relevant date, but Brenntag shall be under no obligation to do so.
- 7.2 Brenntag shall not be obliged to make delivery at any specified time. The Buyer shall be obliged to accept any delivery during the hours of 8:30 a.m. and 4:30 p.m. on a day on which the banks are open for a full range of transactions in the territory in which the Buyer is situated
- (the "Normal Delivery Hours"). If the Buyer requests that delivery take place at a specified time or outside the Normal Delivery Hours and the same is recorded in the Order Acknowledgement, Brenntag will use its reasonable endeavours to deliver at the specified time. Brenntag may charge an additional amount for such delivery, at Brenntag's absolute discretion.
- 7.3 Time shall not be of the essence with respect to any of Brenntag's obligations arising under the Contract.
- 7.4 Brenntag shall not be liable in respect of any loss incurred by the Buyer arising from any delay in delivery of the Goods or performance of any service.
- 7.5 Where the Goods are delivered by Brenntag by road tanker or similar vehicle, the Time of Delivery shall be when the Goods pass the final flange on the road tanker.
- 7.6 Where the Goods are delivered by Brenntag by drum or other container, the Time of Delivery shall be when the Goods are removed from the transporting vehicle.
- 7.7 Where the Goods are collected from Brenntag by drum or other container, the Time of Delivery shall be when the Goods are lifted over the side of the Buyer's transporting vehicle.
- 7.8 Where the Goods are collected from Brenntag's storage tank or site, in a road tanker or similar vehicle, the Time of Delivery shall be when the Goods pass the final flange of Brenntag's storage tank.
- 7.9 Where the Goods are delivered in some manner other than as specified in Clauses 7.5, 7.6 or 7.8 above, the Time of Delivery shall be when the Goods leave Brenntag's premises.
- 7.10 The provisions of Clauses 7.4, 7.5, 7.6, 7.8 and 7.9 above are subject to any contrary provision of the Order Acknowledgement which may specify a different Time of Delivery. Without limitation, the Order Acknowledgement may specify that an Incoterm applies in which event the Time of Delivery shall be when delivery is effected as stated in that Incoterm (and if none is so stated, then in accordance with the provisions of Clauses 7.4, 7.5, 7.6, 7.8 and 7.9 above).
- 7.11 Where the Goods are handed to a carrier for carriage to the Buyer or to a United Kingdom port for export any such carrier shall be deemed to be an agent of Brenntag and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 7.12 The Buyer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to Products sent by Brenntag.
- 7.13 The Buyer shall not be entitled to reject the Goods if Brenntag delivers up to and including 5% more or less than the quantity of Goods ordered.
8. **DELIVERY BY INSTALMENTS**
- 8.1 Brenntag shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between Brenntag and the Buyer.
- 8.2 Any failure, suspension or delay by Brenntag in respect of any part-delivery of the Goods or the discovery of any defect in any of the Goods so delivered shall not entitle the Buyer to cancel the remainder of the Contract and shall

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not affect the obligations of the Buyer in respect of the remainder of the Goods or the remainder of the Contract.

9. **SUITABILITY OF STORAGE AND OFFLOADING FACILITIES**

Brenntag reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by the Buyer are inadequate or unsuitable in which case the provisions of Clause 10 shall apply. Where the Goods are delivered by Brenntag such delivery shall in no way constitute a commitment or representation by Brenntag as to the adequacy or suitability of the Buyer's storage or offloading facilities. The Buyer shall at all times be solely responsible and liable to ensure that the Buyer's storage and offloading facilities are adequate and suitable.

10. **FAILURE TO ACCEPT DELIVERY WHEN TENDERED**

10.1 Where any delay in delivery of the Goods is caused by the Buyer, Brenntag shall be entitled to charge the Buyer all proper costs arising out of such delay, including without limitation:

10.1.1 the cost of returning the Goods to Brenntag's premises, of storing the Goods and of re-delivering the Goods; and

10.1.2 the wasted cost of having men and materials ready to deliver the service.

10.2 Notwithstanding Clause 10.1, and subject to any contrary provision that Brenntag may agree to in writing, the Buyer shall be entitled to re-schedule on not more than one occasion delivery of the Goods by giving Brenntag reasonable notice in writing so to do.

11. **FORCE MAJEURE AND HARDSHIP**

11.1 In this Clause 11, "Force Majeure Event" means an event wholly beyond the reasonable control of the party claiming the benefit of the Clause (including its sub-contractors) including, without limitation, an act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure by any statutory undertaker, utility company, local authority or like body to provide services, any failure, shortage of power, fuel, raw material, Goods bought from third parties or transport, and any act or omission of any third party to the extent that performance of any obligation of the party claiming the benefit of the Clause relies thereon.

11.2 Neither party shall be under any liability to the other party in respect of any failure to perform or delay in performing any of its contractual obligations to the other party (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract. The party seeking to take advantage of this Clause 11 shall:-

11.2.1 give the other party notice as soon as reasonably practicable of the said Force Majeure Event; and

11.2.2 use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the said failure or delay.

12. **TERMINATION**

12.1 If:-

12.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or has an administrator or administrative receiver appointed over the whole or any part of its assets; or

12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

12.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

12.1.4 Brenntag reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

12.1.5 any event takes place in any jurisdiction other than England, which is analogous to any of the above under this Clause 12.1; or

12.1.6 the Buyer is in breach of any material provision of the Contract and fails to remedy such breach within thirty (30) days of a notice from Brenntag indicating the breach and requiring the Buyer to remedy the same.

12.2 Where Clause 12.1 applies, then, without prejudice to any other right or remedy available to Brenntag, Brenntag shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer.

12.3 Where Clause 12.1 applies and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.4 The Buyer may terminate the Contract at any time not less than twenty four (24) hours before the time that the Goods are scheduled to leave Brenntag's premises, provided always that where the Buyer exercises this right, the Buyer shall be liable to compensate Brenntag for costs incurred prior to receipt by Brenntag of notice of such termination. Brenntag may issue an invoice for such costs at any time after such notice of termination has been received.

13. **VARIATION IN SPECIFICATION**

13.1 Brenntag's only responsibility shall be to deliver Goods in accordance with the relevant Brenntag specification or any formal written specification referred to in the relevant Order Acknowledgement. If the Buyer wishes an alternative specification the Buyer must raise that issue prior to the Contract being entered into and ensure that it is recorded correctly in the Order Acknowledgement.

13.2 Brenntag shall be responsible for ensuring that the Goods when supplied are in accordance with the specification as set out in Clause 13.1. Brenntag shall not be obliged to undertake any tests not relating to the specification. Without limitation, Brenntag shall not be under any obligation to test for any contaminant not envisaged by the specification.

13.3 Where the Goods are pre-packaged goods that are sold on by Brenntag in the same packaging as they are bought

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- by Brenntag, then in place of Clauses 13.1 and 13.2 above, Brenntag's only obligation shall be to use its reasonable endeavours to pass on to the Buyer the warranties given to Brenntag by the seller of the Goods to Brenntag.
- 13.4 Brenntag may, by giving written notice to the Buyer, vary the specification of the Goods at any time. The Buyer may terminate the Contract by giving notice promptly after receipt of any such notice.
14. **WARRANTY AND LIABILITY**
- 14.1 Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise, howsoever arising, are excluded to the fullest extent permitted by law. The Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose and the Buyer acknowledges that it is relying solely on the Buyer's own skill and judgment and not Brenntag's in determining such suitability. Brenntag warrants that the Goods will for the shelf life specified for the Goods, comply with the specification as set out in Clause 13.1 above. If no specification has previously been supplied to the Buyer, a specification will be supplied to the Buyer on request and Brenntag warrants that the Goods will comply with that specification.
- 14.2 The following provisions in this Clause 14 set out Brenntag's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Buyer in respect of:-
- 14.2.1 a breach of Brenntag's contractual obligations;
- 14.2.2 a tortious act or omission for which Brenntag is liable;
- 14.2.3 an action arising out of a misrepresentation made by or on behalf of Brenntag, arising in connection with the performance or contemplated performance of the Contract or out of an act done or omission made as a consequence of the entry into the Contract by Brenntag.
- 14.3 Brenntag's total liability to the Buyer for:
- 14.3.1 physical damage to the Buyer's buildings or immovable plant caused by the negligence of its employees in connection with the Contract shall be limited to £100,000 (one hundred thousand pounds) for any one event or series of connected events; and
- 14.3.2 all other loss or damage arising under or in connection with the Contract shall in no circumstances exceed twice the price of the Goods unless agreed otherwise by Brenntag and set out in the Order Acknowledgement or any Special Conditions.
- 14.4 Brenntag shall in no circumstances be liable to the Buyer for any:-
- 14.4.1 pure economic loss;
- 14.4.2 loss of profit;
- 14.4.3 loss of business;
- 14.4.4 loss of contracts;
- 14.4.5 indirect loss.
- 14.5 The Buyer's attention is drawn to any specific disclaimers on the Order Confirmation and specification form[s] where the Goods are classified as material grade product.
- 14.6 The Buyer shall only be entitled to bring a claim against Brenntag where the Buyer issues legal proceedings against Brenntag within the period that is the lesser of (i) the shelf life of the Goods and (ii) the period of twelve (12) months commencing on the date upon which the Buyer ought reasonably to have known of its entitlement to bring such a claim.
- 14.7 The exclusion of liability referred to in this Clause 14 does not apply so as to exclude or limit Brenntag's liability for:-
- 14.7.1 death or personal injury resulting from the negligence of Brenntag, its servants or agents; or
- 14.7.2 damage for which Brenntag is liable to the Buyer under Part I of the Consumer Protection Act 1987;
- 14.7.3 breach of Brenntag's implied undertaking as to title to the Goods contained in Section 12 of the Sale Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- 14.7.4 fraud or fraudulent misrepresentation,
- save that nothing in this Clause 14 shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.
- 14.8 The exclusions from and limitations of liability set out in this Clause 14 shall be considered severable. The validity or unenforceability of any one paragraph or sub-paragraph of this Clause 14 shall not affect the validity or enforceability of any other part of this Clause 14.
- 14.9 The provisions of this Clause 14 shall survive the termination of the whole or a part of the Contract.
15. **SAMPLES**
- Except where the Goods are specifically ordered in writing against samples supplied by Brenntag and the Order Acknowledgement expressly refers to those samples, any and all samples supplied by Brenntag are supplied for information only. Where the Buyer requires an additional warranty that the Goods comply with such a sample, the Buyer must communicate the same to Brenntag prior to the issue of an Order Acknowledgement. The Order Acknowledgement shall refer to any additional warranty (in the form of an additional specification) to which Brenntag may agree. Brenntag does not give any further warranty about compliance of the Goods with any sample other than in respect of the specification contained in the Order Acknowledgement.
16. **CONTAINERS AND PALLETS**
- 16.1 This Clause 16 shall only apply where containers or pallets belonging to Brenntag are used in connection with the delivery of the Goods.
- 16.2 The value of all chargeable containers or pallets used in connection with the delivery of the Goods will be shown as a separate item on Brenntag's sales invoice for the Goods and shall be paid for in full by the Buyer when payment for the Goods is due.
- 16.3 All chargeable containers or pallets returned, at the Buyers expense to Brenntag, in good and complete condition,

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within sixty (60) days of receipt by the Buyer, may be eligible for a credit to be used against purchases of Goods within twelve (12) months of the date of award of such credit. If such credit is not used within that period, it shall lapse. Brenntag shall have no obligation to accept the return of containers or pallets that are in any way damaged.

16.4 If the Buyer elects to retain the containers or pallets it must remove all reference to Brenntag branding on them.

16.5 If there is any change in applicable legislation or regulations regarding packaging and the same directly or indirectly results in additional costs being incurred by Brenntag in the performance of this agreement, Brenntag shall be entitled to increase the prices to the extent required to recover such same costs from the Buyer.

17. INTELLECTUAL PROPERTY

17.1 The Buyer shall indemnify Brenntag against all costs, claims, losses, expenses and damages incurred by Brenntag, or for which it may be liable due to or arising directly or indirectly out of any infringement, or alleged infringement, of all and any Intellectual Property occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.

17.2 Unless otherwise agreed in writing with Brenntag:-

17.2.1 Brenntag shall be the exclusive proprietor of copyright in all original documents supplied or produced by Brenntag to the Buyer in connection with the Contract;

17.2.2 all Intellectual Property in or relating to the Goods shall (subject to any existing rights of any third party in any Intellectual Property incorporated or used in the design of the Goods) be the exclusive property of Brenntag and neither the Buyer nor any agent, contractor or other person authorised by the Buyer, shall at any time make any unauthorised use of that Intellectual Property, including for the avoidance of doubt on any containers or pallets supplied by Brenntag which the Buyer retains for its own use after purchase of the Goods.

18. CLAIMS

18.1 The Buyer shall inspect the Goods as soon as is practicable after the Time of Delivery and shall give to Brenntag and the carrier in writing, before the end of the next working day, after the Time of Delivery, notice of any claim for any defect, shortage, damage or loss to the Goods whilst in transit. If the Buyer fails to do so or the Buyer makes use of the Goods after giving such notice, the Goods shall be conclusively presumed to have been received and accepted by the Buyer without any claim for any defect, shortage, damage or loss.

18.2 In the event of a valid claim for defect, loss, damage, or non-compliance with the Contract or non-delivery, Brenntag undertakes at its option either to repair, reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.

18.3 The provisions of this Clause 18 shall only apply where any claim for any defect, shortage, damage or loss to the Goods is apparent on visual inspection.

19. HEALTH AND SAFETY AT WORK

19.1 Where required by law and available to Brenntag, Brenntag will supply safety data sheets and other information regarding the health and safety attributes of the Goods including (without limitation) those required under REACH.

19.2 The Buyer will comply with health and safety legislation. In particular but without limitation, the Buyer shall fully and effectually indemnify Brenntag against any costs, claims, losses, expenses and damages incurred by Brenntag or for which it may be liable due to or arising directly or indirectly out of:-

19.2.1 An Unexpected Defect in the Goods meaning a defect in the Goods other than a failure by the Goods to meet the relevant Brenntag specification or any formal written specification indicated in the Order Acknowledgment;

19.2.2 a failure to use the Goods in accordance with the health and safety legislation or with the information regarding the health and safety attributes of the Goods supplied by or on behalf of Brenntag (whether such failure is on the part of the Buyer's employees, contractors or agents, or a third party to whom the Buyer has supplied the Goods);

19.2.3 a failure to comply with the Buyer's obligations under REACH.

19.3 The Buyer represents warrants and undertakes to Brenntag that it shall fully comply with its obligations under REACH and shall promptly provide to Brenntag such information as may reasonably be required from time to time in order for Brenntag to obtain and maintain REACH Compliance in respect of the Goods.

19.4 The Buyer undertakes to ensure that all information provided or made available by Brenntag to the Buyer concerning the use, handling, processing, storage or transportation of the Goods (hereinafter the "**Use of the Goods**"), including without limitation all information concerning any risks to health or safety to which the Use of the Goods may give rise and any conditions necessary to ensure that the Use of the Goods will be without risk to health, shall be brought to the attention of all employees of the Buyer and others involved in the Use of the Goods. The Buyer further undertakes to impose a similar requirement upon any third party to whom the Goods are sold or supplied.

19.5 The Buyer shall promptly inform Brenntag of any incident of which the Buyer becomes aware in which the Use of the Goods has or may have given rise to risks to the health or safety of any person.

20. EXPORT SALES

20.1 The provisions of this Clause 20 shall apply only where the Order Acknowledgement indicates that an Incoterm applies to the Contract.

20.2 The sale of the Goods is subject to the Incoterm (if any) stated in the Order Acknowledgement.

20.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation and use of Goods into the country of destination and for the payment of any duties on them. Brenntag will not be liable if the Buyer breaches any such legislation or regulations.

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20.4 Unless otherwise agreed in writing, Brenntag shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

20.5 Where Brenntag has agreed to invoice for the Goods in a currency other than sterling, Brenntag may at any time prior to delivery revise the price of the Goods to take account of any variation in exchange rates.

21. BRITAINS EXIT FROM THE EUROPEAN UNION

21.1 Brenntag and the Buyer acknowledge that on 31 January 2020 HM Government ratified the withdrawal agreement and Britain left the EU. The effect of the giving of such notice to leave the EU has left Britain in a transition period due to expire on 31 December 2020. This expiry may (either directly or indirectly) be such as to:

21.1.1 require a change in the obligations of Brenntag to be performed under this agreement or adversely delay or otherwise impact Brenntag's ability to comply with such obligations;

21.1.2 necessitate the obtaining of any new or revised licence, permission, registration, authorisation or exemption that is either a statutory or industry standard requirement;

21.1.3 necessitate the obtaining of a new or revised consent from a third party;

21.1.4 remove the requirement for obtaining a statutory licence or permission; or

21.1.5 remove the requirement for obtaining a consent from a third party.

21.1.6 any one or combination of the provisions contained in clauses 21.1.1 – 21.1.5 which would constitute a 'Brexit Change'.

21.2 If a Brexit Change occurs, or any other change in applicable legislation or regulation occurs:

21.2.1 and the same directly or indirectly results in additional costs being incurred by Brenntag in the performance of this agreement, Brenntag shall be entitled to increase the prices to the extent required to recover such same costs from the Buyer; and

21.2.2 the same directly or indirectly prevents or hinders Brenntag's performance in these Conditions, such Brexit Change shall be deemed a Force Majeure Event for the purposes of clause 11.

21.3 In addition to the provisions contained within clauses 4 & 20, all prices are exclusive of all applicable taxes, customs duties, tariffs, levies and similar fees which shall be for the account of the Buyer at the relevant rates from time to time and, to the extent they are paid by Brenntag, the Buyer shall reimburse Brenntag.

22. PERSONAL DATA

Brenntag may need to process personal data about the Buyer and/or its employees pursuant to the Contract, such as contact details, as further described in the Privacy Notice available upon request and/or available on Brenntag's website. By entering into these terms, the Buyer confirms that it has read and understood this Privacy Notice and agrees that it will ensure that any of its employees whose personal data Brenntag may process pursuant to this Contract will be provided with the

information contained in this Privacy Notice prior to Brenntag processing their personal data.

23. CONFIDENTIALITY

The Buyer and Brenntag undertake that they will not at any time hereafter use, divulge or communicate to any person, except to their professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may in future come to their knowledge. The Buyer and Brenntag shall use their reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

24. ENTIRE AGREEMENT

The Contract and these Conditions (together with all the other documents to be entered into pursuant to it) sets out the entire agreement and understanding between the parties relating to the matters contemplated by the Contract, and all conditions, terms and warranties, whether express or implied, are excluded if they are not expressly set out in the Contract.

25. ASSIGNABILITY

The Buyer shall not be entitled to assign the benefit or burden of the whole or any part of any Contract without the prior written consent of Brenntag. Brenntag may subcontract the performance of its obligations as it sees fit, provided always that Brenntag shall remain responsible for the acts and omissions of its subcontractors.

26. WAIVER

Save in respect of a waiver granted in writing, the failure of Brenntag at any time to enforce a provision of the Contract shall not be deemed a waiver of such provision or of any other provision of the Contract or of Brenntag's right thereafter to enforce that or any other provision of the Contract.

27. SEVERABILITY

If a provision in these Conditions or a Contract is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:-

27.1 such unenforceability shall not affect the rest of the Contract; and

27.2 the parties shall in good faith amend and if necessary novate the Contract to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.

28. STATUS

Nothing in these Conditions shall create any joint venture, agency or partnership between Brenntag and the Buyer.

29. VARIATIONS

All variations to any Contract or to these Conditions must be made in writing and be signed by both parties and in the case of Brenntag by a director as shown on Brenntag's records at Companies House. Each party shall at its own

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cost do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably requested of it by the other party to implement the Contract.

30. **THIRD PARTY RIGHTS**

The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to the Contract and the Contract shall not confer any right on a third party under that Act or otherwise.

31. **PROPER LAW**

Every Contract to which these Conditions apply shall be construed and take effect in accordance with the laws of England and the parties hereby accept the exclusive jurisdiction of the English Court.