

## GENERAL TERMS AND CONDITIONS - CANADA

**1. Entire Agreement.** Except as otherwise agreed in writing signed by the entity purchasing the Product (hereinafter defined) ("Buyer") and the Brenntag entity selling the Product ("Seller"), these General Terms and Conditions ("Terms"), along with the quote, order confirmation, bill of lading or any other document(s) issued by Seller which reference these Terms and the purchase order or similar document issued by Buyer, constitute the final expression of the agreement between Buyer and Seller with respect to the subject matter hereof and a complete, fully integrated and exclusive statement of their agreement in this regard. There are no understandings, agreements, covenants, representations or warranties of any kind, express or implied, not expressly set forth herein. No provision of any purchase order or other document issued by Buyer will modify or add to these Terms other than general commercial business terms (that vary from purchase order to purchase order such as location, dates and price). Any provision attempting to modify or add to these Terms shall be void and of no effect and are hereby expressly objected to and rejected by Seller. No modification of these Terms by Buyer will be binding upon Seller unless it is in writing and is signed by an authorized representative of Seller. No modification of these Terms shall be effected by the parties' course of dealing, usage, or trade custom. By taking delivery of or otherwise accepting any product offered by Seller ("Product"), Buyer shall conclusively be deemed to have accepted and assented to these Terms.

**2. Separate Transactions.** All purchase orders shall be subject to written acceptance by Seller. Buyer may not cancel a purchase order once accepted by Seller. Each shipment shall constitute a separate and independent transaction and Seller may recover for each such shipment without reference to any other shipment. If Buyer is in default of any term or condition of these Terms, Seller may, at its option, without waiving its right to terminate the transaction, defer further shipments hereunder until such default is remedied or, in addition to any other right or remedy at law or in equity, Seller may decline further performance of these Terms. Seller, in its sole discretion, may delay or refuse to ship the Product to Buyer if Buyer delays delivery, is in breach of any provision of these Terms, or if in Seller's opinion the delivery or use of the Product may result in an environmental, health or safety danger or hazard. If, in the judgment of Seller, the financial condition of Buyer shall at any time become impaired such that it cannot satisfy its obligation to Seller, Seller may, without notice to Buyer, suspend credit, cancel any unfilled orders, and/or decline to make further deliveries under these Terms except upon receipt, before shipment, of payment in full or satisfactory security for such payment.

**3. Product Returns.** Except as set forth in Section 5.2 herein, no Product sold hereunder shall be returned to Seller without Seller's prior written permission. Approved returns of non-defective Product shall be subject to a restocking charge equal to 25% of the then current sale price FOB Seller's warehouse as indicated in the Product return approval, with return freight charges for Buyer's account.

**4. Customer Specific Inventory.** If Seller orders, procures, creates, stocks, or otherwise designates Product specifically for Buyer and no other customer, in the amount needed to satisfy Buyer's purchase order, estimated forecast, or other written request ("One Customer Product"), then such One Customer Product shall be deemed to have been purchased by Buyer on the sixty-first (61st) day after the date of delivery to Seller's warehouse. Seller shall deliver such One Customer Product to Buyer thereafter, and Buyer shall pay Seller for those One Customer Product in accordance with these Terms.

### **5. Warranties.**

**5.1.** Seller warrants that the Product shall: (a) be delivered with good title, free from all liens and encumbrances; and (b) upon delivery, meet Seller's specifications (collectively, the "Warranty"). Seller does not warrant or guarantee a minimum shelf life for any Product. Determination of the suitability of the Product supplied hereunder for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer.

**5.2.** Subject to the remainder of this paragraph, Seller will replace, if necessary, any Product that does not meet the Warranty. Seller may, at its sole option, elect to credit Buyer for the purchase price of any defective Product in lieu of replacement. Replacement of, or credit for, defective Product is subject to and conditional upon: (a) Buyer's account with Seller being current and in good standing; (b) written notice from Buyer within seven (7) days of delivery of any Product that does not meet the Warranty; (c) provision of independent evidence satisfactory to Seller that the Product does not meet the Warranty; (d) if requested

by Seller, the provision of a sample of the Product to Seller for testing; and (e) proper storage of the Product at all times in accordance with Seller's or manufacturer's instructions. The Warranty excludes damage to or alteration of the Product arising from circumstances outside the control of Seller, including, without limitation, mixing with other chemicals or products. This Section 5.2 constitutes Buyer's sole and exclusive remedy and Seller's sole and exclusive obligation with respect to any and all Product furnished hereunder.

**5.3.** All specifications, formulae, drawings, illustrations, descriptive matter and particulars contained in Seller's catalogs, website and marketing documents (the "Descriptions") are indicative only, do not form part of these Terms, and are not representations or warranties of any kind. No discrepancy between the Product and the Descriptions will trigger the Warranty obligations set forth herein, or entitle Buyer to otherwise seek compensation or damages. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS A WARRANTY WITH RESPECT TO THE RESULTS OBTAINED OR OBTAINABLE FROM THE USE OF ANY PRODUCT SUPPLIED OR THE WORK OR SERVICES PERFORMED BY SELLER HEREUNDER.**

## **6. Indemnification; Limitation of Liability; Remedies.**

**6.1** BUYER ASSUMES AND RELEASES SELLER FROM ANY AND ALL RISKS AND RESPONSIBILITY IN CONNECTION WITH BUYER'S PURCHASE, HANDLING, USE, STORAGE, OR RESALE OF THE PRODUCT, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS. SELLER ASSUMES NO OBLIGATION OR LIABILITY FOR ANY TECHNICAL ADVICE GIVEN BY SELLER OR ITS SUPPLIERS WITH REFERENCE TO THE USE OF THE PRODUCT OR THE RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL SUCH ADVICE IS GIVEN AND ACCEPTED AT BUYER'S SOLE RISK. BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER, ITS SUBSIDIARIES, AFFILIATED COMPANIES AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS (COLLECTIVELY "SELLER GROUP") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, SUITS, INQUIRIES, COSTS AND EXPENSES (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR OTHERWISE RELATED TO BUYER'S USE, HANDLING, STORAGE, TRANSPORTATION OR RESALE OF ANY PRODUCT.

**6.2** IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES, LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY, DAMAGES TO GOODWILL OR REPUTATION OR OTHER SIMILAR DAMAGES RESULTING FROM, RELATED TO OR ARISING OUT OF THESE TERMS OR THE AGREEMENT BETWEEN THE PARTIES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER GROUP'S TOTAL LIABILITY HEREUNDER WHETHER IN CONTRACT, TORT, STATUTE, OR STRICT LIABILITY FOR INDEMNITY, DEFENSE OR OTHERWISE SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID OR PAYABLE BY BUYER FOR THE QUANTITY OF PRODUCT WITH RESPECT TO WHICH SUCH CLAIM IS MADE. IN THE CASE OF BULK DELIVERIES, SELLER GROUP'S TOTAL LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE DELIVERY OF THE PRODUCT IMMEDIATELY PRECEDING THE DATE OF SUCH CLAIM. TO THE FULLEST EXTENT ALLOWABLE, BUYER HEREBY SPECIFICALLY WAIVES ALL OTHER RIGHTS, IF ANY, TO DEFENSE OR INDEMNIFICATION BY SELLER WHICH MAY BE AVAILABLE AT LAW OR IN EQUITY, INCLUDING DEFENSE OR INDEMNIFICATION UNDER FEDERAL, PROVINCIAL, LOCAL OR COMMON LAW.

**6.3** Buyer expressly waives any and all Claims against Seller, and no Claim shall be allowable, after any Product has been repackaged, processed, altered or combined with any other material in any manner by Buyer or its agent or at Buyer's direction. No Claim or action, regardless of form, arising out of the sale or delivery of the Product hereunder, may be commenced by Buyer more than one (1) year after the occurrence of the event giving rise to such Claim.

**7. Safety.** Buyer acknowledges that there may be hazards associated with the possession and use of the Product and its containers and shall assume all liability resulting from, or in any way connected with, its or

their storage, possession, transportation, handling, resale or use or its or their suitability for any particular use. Buyer acknowledges the hazardous nature of the Product, and that it has a duty to warn, protect and train as appropriate all persons who may be exposed to these hazards. Buyer also acknowledges that Seller has provided it with appropriate Safety Data Sheet(s) ("SDS"). Upon request of Buyer, Seller shall supply Buyer with additional SDS. Buyer understands that the Product must not be handled or used without first consulting the SDS. Buyer will ensure that all of its employees and all other persons who might become exposed to the Product receive and refer to copies of the SDS.

**8. Returnable Containers.** Buyer acknowledges that all returnable containers shall remain the property of Seller and shall not be used by Buyer for purposes other than the storage of Product delivered therein by Seller. Buyer shall pay Seller's container deposit charges, as established by Seller from time to time, and shall remit the amounts of such charges when making payment for the Product delivered therein. Container deposit charges shall be refunded to Buyer upon return of the containers, provided they are returned to Seller in good and reusable condition (normal wear and tear excepted) within ninety (90) days of the date of delivery, and have been used only for storage of the original contents. If returnable containers are not returned in such condition within ninety (90) days of delivery or have been used for storage of products not purchased from Seller, the deposit shall be forfeited and retained by Seller, and Buyer shall be liable to Seller for an amount equal to the difference between the deposit and the replacement cost of the returnable container. In this case, Buyer accepts sole responsibility for the disposal of any containers and their contents in accordance with applicable law. Buyer agrees to defend, indemnify, and save Seller Group harmless from and against any and all Claims arising from Buyer's handling, use, storage, or disposal of any returnable container or its contents.

## **9. Delivery.**

**9.1.** Unless otherwise agreed in writing by Seller, (a) all prices are net, DAP Buyer's warehouse, and (b) title to and risk of loss of the Product shall pass to Buyer upon delivery.

**9.2.** Unless at the time of Buyer's acceptance of Seller's quotation or in the applicable purchase order, Buyer specifies in writing the desired method of transportation (air express, motor freight, etc.), Seller will use its judgment in selecting the carrier and route. If the Product is shipped in containers furnished by a carrier, all charges made by the carrier for detention at destination shall be for Buyer's account and shall be payable to Seller.

**9.3.** Delivery schedules are estimated and assume timely receipt of all necessary information and documentation from Buyer, and Seller assumes no responsibility for delays. All requested delivery dates, shipments and order lead times are subject to Seller's ability to (a) obtain the Product, and (b) schedule or provide transportation. Buyer shall cooperate fully with Seller's efforts to deliver the Product, and shall be appropriately prepared to safely and promptly receive the Product when delivered. Buyer shall provide adequate access to on-site tanks, or other suitable receptacles, to allow for the efficient unloading of the Product. If the delivery of the Product is delayed or prevented by circumstances caused by Buyer, including, without limitation, by Buyer's inability to accept delivery, Buyer shall pay all costs associated with the delayed delivery, storage of the Product, insurance, and any costs incurred by Seller in making further attempts to deliver the Product.

**9.4.** Buyer is responsible for inspecting all Product upon delivery to ensure that the correct volume, concentration levels, and type of Product have been received. Any shortage, excess, mis-shipment, or defect in any Product must be reported to Seller within seven (7) days of receipt of the Product by Buyer. Seller shall not be responsible for any Claim for shortages or failure to meet the Warranty after this time. In case of bulk carload or tank car shipments, Seller's weight, shall govern absent manifest error.

## **10. Price; Special Charges; Payment Terms; Taxes; Credits; Set Off.**

**10.1.** Until a specific purchase order is accepted by Seller, quoted prices are subject to change without notice. Unless otherwise set forth in the purchase order or in a written agreement by the parties, once a purchase order has been accepted, Seller shall have the right to revise the price of any Product by written notice (including email) to Buyer.

**10.2.** Buyer shall pay the fees and prices set forth in these Terms and the purchase order, and any other special charges (including temporary emergency, plant outage and insurance, transportation, fuel and energy

surcharges) that Seller may assess, from time to time. Special charges may be amended or added at Seller's discretion.

**10.3.** Payment terms are net thirty (30) days. All payments due hereunder shall be made to Seller in lawful money of Canada at the location indicated on Seller's invoice. If Buyer fails to notify Seller in writing of any dispute with an invoice within thirty (30) days of its receipt, Buyer shall be conclusively presumed to be in agreement with all aspects of the invoice. If Buyer does not pay on time, Seller may (a) require advance payment from Buyer, (b) suspend deliveries, and/or (c) charge interest at a rate of two percent (2%) per month (compounded monthly), or the maximum allowed under applicable law, if less, on all overdue charges and interest.

**10.4** Buyer agrees to pay all taxes (if any) upon the sale, delivery, storage and use of the Product. Buyer shall reimburse Seller for all taxes, increases in or new taxes, excises, duties or other charges which Seller may be required to pay to any federal, provincial or local government upon, or measured by, the production, sale, transportation or use of, any Product sold hereunder, (excluding taxes on Seller's income and property). Applicable taxes, duties, foreign exchange, and other charges shall be calculated at the rate in effect at the time of transfer of title to Buyer.

**10.5.** Any credit issued by Seller to Buyer may only be applied against the cost of future purchases from Seller and will not be paid in cash. Any such credit will expire one (1) year after the date of issuance, and Seller will have no obligation with respect thereto in the event that Buyer does not apply the credit prior to such expiry date.

**10.6.** Buyer shall have no right of set-off or withholding and no deduction of amounts due from Buyer to Seller shall be made without Seller's prior express written approval.

**11. Force Majeure.** Neither party shall be liable in damages or otherwise, for delay or impairment or failure of performance (other than failure to timely pay monies due) by reason of causes beyond such party's reasonable control (a "Force Majeure Event"). A Force Majeure Event shall include, without limitation, claims of force majeure, allocations of product, work stoppages or slow-downs, plant closures or price increases by Seller's suppliers; strikes; labor difficulties; shortage of fuel, power, raw materials or supplies; inability to obtain shipping space; transportation delays; fire; floods; accidents; riots; acts of God; war or terrorism; pandemics and other public health related events; governmental action or embargo. If a Force Majeure Event continues for more than thirty (30) days, then the non-affected party may terminate the affected purchase order upon written notice. Nothing contained in this section shall be interpreted or construed to require a party to settle a labour dispute against its will.

## **12. Governing Law and Venue; Dispute Resolution.**

**12.1. Governing Law and Venue.** These Terms shall be governed by and enforced in accordance with the laws of Ontario, without reference to its conflict of law rules. Buyer shall be conclusively deemed to have consented to the exclusive jurisdiction of the courts (federal and provincial) where Seller's corporate office is located for any and all claims arising out of or relating to these Terms. Buyer expressly agrees to waive any and all rights to object to such jurisdiction on any basis, including but not limited to, *forum non conveniens*. Seller shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, in any court proceeding brought by Seller in connection with these Terms. **BUYER FURTHER AGREES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM ARISING HEREFROM.** The parties hereby expressly acknowledge that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms.

**12.2. Dispute Resolution.** Any dispute, controversy, or Claim between the parties (a "Dispute") that (a) does not involve a third party and (b) arises out of or relates in any way to (i) these Terms or (ii) any sale and purchase or use of the Product sold hereunder, shall be subject to the following dispute resolution procedure. The parties will attempt in good faith to resolve any Dispute through good faith negotiations. If the Dispute has not been settled within thirty (30) days from the date on which the party initiating the Dispute has served written notice on the other party, then, at Seller's sole option, the Dispute shall be solely, exclusively and finally resolved by binding arbitration administered by the ADR Institute of Canada Inc.in

accordance with its commercial arbitration rules. The arbitration shall take place before a single arbitrator unless the amount in controversy exceeds two hundred and fifty thousand USD (\$250,000), in which case the arbitration shall take place before a panel of three (3) arbitrators. The arbitrator(s) shall be knowledgeable in either the chemical or distribution industry. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator. In the event three arbitrators are appointed, each party shall pay for the cost of its own arbitrator plus one-half of the cost of the third arbitrator. Except as otherwise provided, each party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. All other costs, fees and expenses shall be split equally between the parties. Arbitration shall take place in the province in which the Seller's corporate office is located. The language of the arbitration shall be English. The decision of the arbitrator(s) shall be in writing with written findings of fact and shall be final and binding on the parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award any damages precluded by these Terms, or any injunctive or any other equitable relief. This Section is the sole recourse for the resolution of any disputes arising out of, in connection with, or related to these Terms, provided however, that nothing in these Terms shall preclude either party from seeking injunctive or equitable relief in accordance with applicable law or seeking redress from the courts for any Dispute involving a third party. No Claim may be made more than one year after the occurrence of the event giving rise to such Claim.

### **13. General Provisions.**

**13.1. Termination.** If Buyer takes the benefit of or becomes subject to any provision of applicable bankruptcy or insolvency law or violates any applicable law, Seller will have the right, by written notice, to immediately terminate any open purchase order or any written agreement between the parties. Seller may also terminate any purchase order or written agreement, in addition to any other rights Seller may have at law or in equity, if within ten (10) days of being notified by Seller, Buyer has failed to remedy any default hereunder. Seller may terminate a purchase order or any written agreement at any time for any reason upon thirty (30) days' written notice to Buyer.

**13.2. Assignment.** Buyer may not assign its obligations or responsibilities pursuant to these Terms without the express written consent of Seller. For the purposes of these Terms, assignment shall include any assignment by merger, acquisition or other operation of law. These Terms shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each of the parties hereto. Any purported assignment in violation of this Section shall be void and of no effect.

**13.3. Notices.** Any notices required or given in connection with these Terms shall be sent or delivered in writing to the last known address of each party and be made by (a) registered mail, (b) certified mail, return receipt requested, or (c) nationally recognized courier service. A copy of such notice shall be sent to the General Counsel of Brenntag North America, Inc., at: [bn.generalcounsel@brenntag.com](mailto:bn.generalcounsel@brenntag.com). Notice shall be deemed given on the day on which it is actually received or refused by the other party.

**13.4. Waiver.** The waiver by either party of any of its rights under these Terms shall not be construed as constituting a precedent, and shall not in any way affect, limit or prevent such party's right thereafter to enforce and compel strict compliance with each and every term or condition contained herein. No waiver shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

**13.5. Severability.** If any provision or provisions of these Terms shall be held to be illegal or unenforceable, the legality and enforceability of the remaining provisions shall not in any way be affected or impaired. The Section headings are for convenience only and shall not be used in interpreting or construing these Terms.

**13.6. Amendment.** Seller may vary or amend these Terms at any time without notice to Buyer and such changes shall apply to all purchase orders accepted after the revision date printed below.

**13.7. Compliance with Laws.** Buyer and Seller shall comply with all applicable international, national, provincial, regional and local laws and regulations with respect to their performance of these Terms. Without derogating from the generality of the foregoing: (a) Buyer acknowledges that the Product may be subject to applicable sanctions and export control laws and regulations ("Export Control and Sanctions Laws"). Buyer shall comply with Export Control and Sanctions Laws and agrees that it alone is responsible for ensuring its compliance with such laws, including by obtaining any governmental authorizations required

under such laws in order to carry on Buyer's business. (b) Buyer will not export, re-export, transfer, use, sell, resell, or otherwise deal in the Product, directly or indirectly, to, for the benefit of, or involving any country or territory subject to comprehensive, government-wide, or broad sectoral sanctions (collectively, "Sanctioned Countries") or to any individual or entity sanctioned under the United Nations Act or the Special Economic Measures Act, or any entity 50% or greater owned or otherwise controlled by the foregoing ("Restricted Parties"). Buyer represents and warrants that it is not (i) organized, ordinarily resident, or headquartered in a Sanctioned Country, (ii) a Restricted Party, or (iii) acting for or on behalf of any Sanctioned Country or Restricted Party.

**13.8. Confidentiality.** Buyer shall not use the Seller's trademarks or any part thereof as part of Buyer's name, nor register any name, including domain names, or mark confusingly similar to the Seller's trademarks. Buyer acknowledges that Buyer is not being licensed any right or interest of any kind in Seller's trademarks or other intellectual property and that Buyer may not use the same without the prior written consent of Seller. All information relating to a party's business, including but not limited to Seller's pricing, customer information, supplier information, marketing and financial plans, trade secrets, data, know-how, formulae, processes, designs, sketches, plans, drawings, specifications, studies, samples, and technical data shall be considered "Confidential Information" hereunder. Each receiving party agrees to maintain such Confidential Information in confidence and exercise reasonable care to not allow disclosure of Confidential Information to any other person, entity, or third party, without the disclosing party's prior written consent; provided, however, that the receiving party may share Confidential Information with its employees, directors, officers, contractors, and professional advisors ("Representatives") who have been made aware of the obligations set forth therein and who have a need to know the Confidential Information, and the receiving party shall be liable for any breach by such Representative as if the receiving party itself committed the breach. The receiving party shall use such Confidential Information only to fulfil its obligations hereunder. The receiving party acknowledges that monetary damages may not be a sufficient remedy for the unauthorized use or disclosure of Confidential Information and the disclosing party shall be entitled, without waiving any other rights or remedies hereunder, to seek injunctive or equitable relief in the event of any breach or threatened breach of this provision.

**13.9. Independent Contractor.** The relationship of the parties hereto is that of Buyer and Seller. Nothing in these Terms, and no course of dealing between the parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the parties or between one party and the other party's employees or agents. Accordingly, neither party shall be empowered to bind the other party in any way, or to incur any liability or otherwise act on behalf of the other party. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and other required deductions at source), workers compensation, and all other employment benefits.

**13.10. No Construction Against Drafter.** These Terms shall not be construed more strongly against either party regardless of which party is more responsible for their preparation.

**13.11. Survival.** Any provision of these Terms that expressly or by its nature is intended to survive the termination of these Terms shall survive indefinitely.

**13.12. Governing Language.** It is the express wish of the parties that this Agreement be written in English. The parties agree that except as otherwise provided by law, only the English version of this Agreement shall bind the parties. Any translation into French is for informational purposes only. C'est le souhait des parties que cet accord soit écrit en anglais, et que seulement la version anglaise de cet accord lie les parties. N'importe quelle traduction française de cet accord est pour but informatif seulement.