

## GENERAL TERMS AND CONDITIONS OF BRENNTAG NEDERLAND

### ARTICLE 1. GENERAL

The following conditions shall exclusively apply to all offers of, instructions to, supplies by and agreements with Brenntag Nederland B.V. (hereinafter referred to as: Brenntag Nederland) with regard to the purchase, sale/supply of goods and/or the carrying out of or involving in services. Stipulations or provisions of the other party, which are contrary to the present terms and conditions, can only be set up against Brenntag Nederland if and in as far as they have explicitly been accepted by Brenntag Nederland in writing. The general terms and conditions of Brenntag Nederland are filed at the offices of the Commercial Register of the Chamber of Commerce Rotterdam.

### ARTICLE 2. TANK STORAGE

The Algemene Voorwaarden voor Tankopslag in Nederland ("VOTOB") (General Terms and Conditions for Tank Storage in the Netherlands) shall apply in the event of tank storage, which terms and conditions are filed at the Offices of the District Courts in Amsterdam, Dordrecht and Rotterdam. In the event of inconsistencies in or with the "VOTOB" conditions, or these general terms and conditions, then these general terms and conditions shall prevail.

### ARTICLE 3. OFFERS, ORDERS

All offers are without any obligation. An agreement shall only come into being after the written order confirmation of Brenntag Nederland. Brenntag Nederland shall comply with the (delivery) times mentioned in the order confirmation as much as possible, however the exceeding hereof does not entitle the other party to dissolve the agreement and/or to compensation. In the event Brenntag has manufactured the goods exclusively for the other party, then the other party is obliged to accept an increase of 5%.

### ARTICLE 4. PRICES

The prices made known by Brenntag in catalogues or in any manner whatsoever are excluding VAT and shall not bind Brenntag Nederland, unless explicitly

agreed upon otherwise. After the conclusion of an agreement Brenntag Nederland is entitled to increase the prices agreed upon in the event, among other things, but not limited to interim increases and/or additional charges on freights, customs tariffs, prices of goods and/or raw materials, taxes, wages or social security charges, interim increases applied by its supplier(s) and changes in the monetary relationships, which result in price increases. In the event the aforementioned price increases with regard to a certain supply are amounting to more than 5% of the price agreed upon (excluding VAT), then the other party will be entitled to cancel the agreement concerning the future supply, on the condition that the other party notifies Brenntag Nederland on this matter in writing by registered mail without delay upon the receipt of the notification stating the said price increase. In that case the other party is not entitled to compensation for whatever reason.

### ARTICLE 5. RISK, (DELIVERY) SUPPLY IN THE EVENT OF SALE

The risk for the goods shall pass from Brenntag Nederland to the other party in accordance with the terms of delivery agreed upon, either FCA (Free Carrier), FOB (Free on Board), FAS (Free Alongside Ship), CIF (Cost Insurance and Freight), DAF (Delivered at Frontier), or otherwise. These terms of delivery are in accordance with the latest issue of "Incoterms" published by the International Chamber of Commerce. In as far as nothing with regard to this matter is agreed upon, then the delivery shall be carried out in accordance with EXW (EX Works). Brenntag Nederland has fulfilled its delivery obligations:

- a) at the moment the goods are offered at the delivery address agreed upon;
- b) in the event it is agreed upon that the goods will be collected; at the moment the goods are available for collection.

Brenntag Nederland reserves the right to deliver in consignments. Such deliveries are considered carried

out in accordance with the separate agreements. The other party is obliged to accept the goods at the moment of delivery. All costs and damage, which arise for Brenntag Nederland as a result of refusal to receive by the other party of (a part of) the goods ordered by it shall be borne by the other party, including the storage costs. The delivery period agreed upon is merely an approximation. This delivery date shall not be considered final date, so that Brenntag Nederland is entitled to deliver about the delivery date agreed upon.

In the event of purchase of or involvement in services by Brenntag Nederland, then Brenntag Nederland shall stipulate uniform delivery dates with the other party. These delivery dates shall be considered deadlines.

#### **ARTICLE 6. PACKAGING**

Non-reusable packaging will not be taken back. Packaging designated to be reused shall remain the property of Brenntag Nederland or third parties and shall only be taken back by Brenntag Nederland if, according to Brenntag Nederland, this packaging is in good condition and it is delivered by the other party completely (drip) empty. The other party is fully liable for damages to such packaging. In the event Brenntag Nederland makes returnable containers available then the packaging conditions of Brenntag Nederland shall apply to this.

#### **ARTICLE 7. ENVIRONMENT, WORKING CONDITIONS AND OTHER SAFETY REGULATIONS**

1. In the event of deliveries by Brenntag Nederland, the other party guarantees that it shall comply with the applicable environmental legislation and regulations. The other party indemnifies Brenntag Nederland against each liability with regard to this matter.
2. The other party is responsible for the working conditions and safety within its own company. The other party must comply with all applicable statutory provisions, the local rules and regulations and the rules and regulations of the Health and Safety Inspectorate. The other party shall instruct

its staff members in time and in advance in accordance with these rules and regulations.

3. The other party shall supervise that its staff members or third parties involved by it will observe the rules and regulations arising from the safety legislation applicable at that moment during the carrying-out of instructions - also if there is a question of oil and gas activities consisting of production and process support, technical support and maintenance of the pipe lines, among other things. The other party shall also supervise that the staff members and/or third parties to be deployed by it will always have sound personal protective equipments at their disposal, all this in accordance with the requirements set by the Health and safety Inspectorate, or another government body.

#### **ARTICLE 8. MEANS OF TRANSPORT**

The other party shall immediately unload and release the means of transport, also including the tank wagons, which are used by Brenntag Nederland, so that no costs or damage as a result of delay will incur for Brenntag Nederland and it shall comply with all instructions, which might be given by Brenntag Nederland for the returning of this material. In the event the above-mentioned is not fulfilled, then the other party is obliged to pay the damage arising from the delay. The unloading of the means of transport must be carried out under the supervision and in the presence of the other party.

#### **ARTICLE 9. PAYMENTS, RETENTION OF TITLE**

1. In the event of sale or the carrying out of services, all payments by the other party must be done within the period mentioned in the invoice, without the right of set-off. In the event no full payment has taken place, then, by operation of law, the other party is in default towards Brenntag Nederland without the fact that a notice of default is required and all claims, which Brenntag Nederland has against the other party, are due on demand. This is also the case if the other party is put into involuntary

liquidation or has applied for a moratorium on payments.

2. The other party is obliged to pay the statutory interest to Brenntag Nederland as from the day the default commences until the day of the full payment. As soon as Brenntag Nederland has passed on the claim for extrajudicial collection, the other party is obliged to pay to Brenntag Nederland a sum of 15% of the principal sum to be claimed, unless the actual extrajudicial collection charges reasonably incurred are higher, in which case the other party is obliged to pay back the said higher charges to Brenntag Nederland. In the event of extrajudicial collection, the other party is obliged to fully pay the actual extrajudicial costs reasonably incurred, including the costs of legal assistance; in as far as the actual costs exceed the amount of the (possible) costs of the proceedings.
3. In the event of sale by Brenntag Nederland, the risk does pass to the other party by means of delivery; however the ownership does not pass to the other party. All goods delivered by Brenntag Nederland remain the property of Brenntag Nederland until the moment of full payment of all, which Brenntag Nederland has to claim from the other party for whatever reason, including the interest and the costs. The other party is not entitled to alienate, to pledge or to encumber, in any manner whatsoever, the goods falling under the retention of title, unless alienation, pledge or otherwise encumbrance takes place within the scope of the normal course of business of the other party.

In case any encumbrance and/or alienation of the goods falling under the retention of title takes/take place anyway, then the other party shall transfer all rights and claims, which it obtains at the (re)sale of the said goods, to Brenntag Nederland now for then, anyhow, the other party shall accomplish this transfer as soon as possible and if required. Without prejudice to the remaining rights belonging to it,

Brenntag Nederland shall, if the other party does not fulfil its obligations towards Brenntag Nederland at all or in time without any notice of default or judicial intervention whatsoever, be irrevocably authorized by the other party to retain the goods delivered by it and for this purpose to enter the place where goods are stored.

#### **ARTICLE 10. CLAIM AND PRODUCT'S SOUNDNESS**

1. The term 'claims' shall be taken to mean all grievances of the other party with regard to the quantity, quality and/or soundness of the deliveries of goods by Brenntag Nederland.
2. Claims concerning non-external observable defects should be done in writing without delay, however within seven days after the delivery hereof at the latest, in the event of expiry of this period each claim against Brenntag Nederland with regard to the said defects shall be cancelled. The other party shall sign for receipt and approval upon the receipt of the delivered goods.
3. External observable defects should be clearly mentioned without delay on the transport document to be signed upon receipt.
4. Submitted claims concerning a certain delivery do not suspend the other party's obligation to pay with regard to the said and other delivery/deliveries nor do they give the other party the right of settlement.
5. With due observance of the limitations mentioned below Brenntag Nederland guarantees the soundness of the goods delivered by it:
  - differences in the quality, finishing and/or soundness of the goods delivered, which are considered permissible and technically unavoidable, including – but not limited to – colours, specifications, function descriptions and in general each instruction concerning measurements and weights of the products;

- in the events of defects, of which the other party shows that these are the result of a defective construction or defective materials and which occur at normal and judicious use of the goods and materials under normal circumstances and for the purpose for which they are designated;
  - with regard to (parts of) goods and materials, which Brenntag Nederland has not manufactured itself, the soundness is limited to the soundness that the supplier has given to the product or which could reasonably be assumed, if the supplier has not awarded qualifications to the product.
6. In the event the other party does not fulfil its obligation at all or in time towards Brenntag Nederland in accordance with the agreement(s) entered into, then it is not allowed to submit claims.
7. The obligation with regard to the soundness of the Product of Brenntag Nederland is explicitly limited to either the repair of the defects or the replacement of the defective goods or the dissolution of the agreement, wholly or in part, without judicial intervention and pro rata credit entry, all this at the choice of Brenntag Nederland, under the conditions to be set by it. Brenntag Nederland has the right to reconsider the choice made by it earlier.

#### **ARTICLE 11. LIABILITY AND INDEMNITY**

1. The liability of Brenntag Nederland for the delivery of goods is limited to the fulfilment of its obligation mentioned in the preceding Article. The liability of Brenntag Nederland for damage directly resulting from the services carried out by Brenntag Nederland for the other party (other than the delivery of goods, including, but explicitly not limited to giving (technical) advices free of charge or against payment) is limited to those cases, in which Brenntag Nederland has failed imputably in the fulfilment of its obligations, unless a further limitation

arises from Article 11 paragraph 2 of these general terms and conditions. Each further liability, other than the ones based on this paragraph of this Article, for damage directly suffered by the other party, as well as each liability for the damage indirectly suffered by the other party, is excluded.

2. In the event Brenntag Nederland notwithstanding or based on the provisions of Article 11 paragraph 1 – for any reason whatsoever – is obliged to pay any damage, then the compensation per event or a series of related events with a joint cause shall not be higher than the amount equal to the invoice value of the purchase, the sale and/or the delivery of the goods or the carrying out of the service, for which damage has been caused.
3. By the way, each claim against Brenntag Nederland shall be cancelled by the mere expiry of the term of one year after the arising of the claim, unless a legal action with regard to this has been instituted against Brenntag Nederland previously.
4. The other party indemnifies Brenntag Nederland, its staff members or persons deployed by or for it against all liabilities from third parties on compensation of any damage suffered by the last-mentioned, caused by or otherwise related to goods from Brenntag Nederland.
5. All defences, which Brenntag Nederland can derive from the agreement entered into with the other party in order to wave aside its liability, can be invoked against the other party by its staff members and third parties, which are involved by it in the performance of the agreement, as if its staff members and these third parties were parties to the agreement.
6. Conditions with regard to limitation of liability, exclusion and definitions, which can be set up by third parties against Brenntag Nederland, can also be set up by Brenntag Nederland against the other party.

## **ARTICLE 12. FORCE MAJEURE**

In the event of force majeure on the part of Brenntag Nederland, then Brenntag Nederland is entitled to suspend the purchase, sale and/or delivery of goods and services or to cancel the agreement, wholly or in part. In that case the other party cannot institute an action for compensation against Brenntag Nederland. The term 'force majeure' shall also be taken to mean: whole or partial failure, limitation or cessation of the business operations of Brenntag Nederland or third parties, on which Brenntag Nederland is depending, regulations issued by third parties, which restrict, obstruct or render impossible the purchase, the delivery of services, the sale and/or the production, the supply, the transport or the unloading of the goods, mobilization, war, hostilities, rebellion, strike, lock-out, conspiracy of workers, hindrances of the railway traffic or the transport using other means of transport or the lack hereof, shipwreck, loss of, damaged or out of order of means of transport or the involuntary liquidation of suppliers or when they rely on force majeure. Brenntag Nederland shall notify the other party on these facts and circumstances without delay stating whether, in how far and under which conditions it can continue the purchase, the delivery of services or the sale and/or the delivery of goods.

## **ARTICLE 13. DISSOLUTION**

In the event of default as referred to in Article 9, as well as with regard to an obligation under any agreement entered into with Brenntag Nederland:

- the other party does not fulfil this at all, in time or properly;
- the other party is put into involuntary liquidation;
- the other party has applied for its own involuntary liquidation or when this will be applied.
- the other party has applied for a (provisional) moratorium on payments, to proceed to wind up, as well as when its capital has been attached, wholly or in part;

then Brenntag Nederland is entitled to immediately dissolve each agreement with the other party

without judicial intervention, without prejudice to the rights, which Brenntag Nederland can derive from these conditions, agreement or the law against the other party, including the right on (full) compensation. In the event of dissolution of any agreement entered into with the seller by the other party, then the other party shall not be entitled to rely on the undoing of the performances already carried out from both parts and neither shall there be an obligation to compensate the value in the event the nature of the performance rules out that it will be undone.

## **ARTICLE 14. PROVISION OF SECURITY**

The other party is obliged to, in response to a request to that effect from Brenntag Nederland, furnish adequate security with regard to the claim, which Brenntag Nederland has against the other party, by means of an irrevocable bank guarantee or by means of the granting of a security considered reasonably equivalent to this. As long as the other party has not fulfilled this, Brenntag Nederland is entitled to suspend the fulfilment of its obligations.

## **ARTICLE 15. APPLICABLE LAW AND COMPETENT COURT**

Dutch Law is applicable to the agreement, with the explicit exception of the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising from offers of, deliveries by, instructions to and agreements with the seller are exclusively decided upon by the competent Court in Dordrecht, unless Brenntag Nederland prefers a competent Court in accordance with the general rules of jurisdiction.

## **ARTICLE 16. INCONSISTENCY BETWEEN THE DUTCH TEXT AND THE TRANSLATION**

In the event of inconsistency between the text of these terms and conditions in the Dutch language and that in another language, the Dutch version shall be binding.

Dordrecht, January 2008