

GENERAL TERMS AND CONDITIONS OF SALE INCLUDING DEED OF SURETYSHIP

The Customer's attention is drawn to the provisions contained in Clauses 7.5, 19, 21 and 22, namely delivery, cession of debtors book, limitation of liability and indemnity as well as suretyship contained in this Contract.

1 DEFINITIONS

In these Conditions:

- 1.1 **"Ancillary Services"** means services necessary for and ancillary to the delivery of Goods, including without limitation Pumpover;
- 1.2 **"Affiliates"** means companies affiliated to, associated to and/or subsidiary to Brenntag and/or the Customer or a holding company of either;
- 1.3 **"Brenntag"** means Brenntag South Africa (Pty) Ltd (registration number 1952/001517/07) of 247 15th Road, Randjespark, Midrand, Johannesburg, 1685, email address: info@brenntag.co.za and shall include its Affiliates;
- 1.4 **"Contract"** means the contract for the supply of the Goods and/or Ancillary Services by Brenntag to the Customer, which consists of the Customer's Application Form accepted by Brenntag; the Brenntag **GENERAL TERMS AND CONDITIONS OF SALE INCLUDING DEED OF SURETYSHIP** (hereinafter the "Conditions"); any Special Conditions agreed to in writing; and where applicable, the Sales Order Confirmation/s; Brenntag's invoice(s) and Brenntag's signed Delivery Note;
- 1.5 **"Customer"** means any person who orders or buys Goods from Brenntag or to whom Brenntag supplies Ancillary Services, whose details are set out in the Customer Application Form;
- 1.6 **"Electronic Signature"** means data attached to, incorporated in or logically associated with other data and which is intended by the user to serve as a signature;
- 1.7 **"Goods"** means the goods supplied or sold by Brenntag to the Customer as specified in the Sales Order Confirmation, Brenntag's invoice(s) and Brenntag's signed Delivery Note/s;
- 1.8 **"Incoterms"** means Incoterms 2010 as published by the International Chamber of Commerce or such other edition or applicable industry terms in force at the date when the Contract is made;
- 1.9 **"Intellectual Property"** means patents, trademarks, designs whether registered or unregistered, applications that are pending for any of the foregoing and the right to apply for any of the foregoing in any part of the world, for Brenntag confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up, logo, know how, domain names, inventions, service marks, and database rights and like rights wherever situated in the world;
- 1.10 **"Order"** means an order placed for the Goods;
- 1.11 **"Party/ies"** shall mean Brenntag and/or the Customer;
- 1.12 **"Pumpover"** means the transfer of bulk fluids from Brenntag's transport into storage facilities as directed by the Customer;
- 1.13 **"Sales Order Confirmation"** means a document generated by Brenntag confirming the Customer's Order sent by fax or e-mail by Brenntag to the Customer or such similar document sent by the Customer to Brenntag and accepted by Brenntag;
- 1.14 **"Special Conditions"** means such additional terms in addition to these Conditions, agreed to from time to time in writing by Brenntag;
- 1.15 **"VAT"** means value added tax as contemplated by the Value Added Tax Act 89 of 1991;
- 1.16 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted;
- 1.17 Reference to any Clause is to a clause in these Conditions. In these Conditions and in any Special Conditions;
- 1.18 The headings are for convenience only and shall

not affect the interpretation of this document or those Special Conditions;

- 1.19 The use of the plural shall include the singular and the use of the singular shall include the plural;
- 1.20 References to the masculine, feminine or other genders;
- 1.21 “**Business day**” shall be a reference to a working day in South Africa, excluding weekends and public holidays.

2 APPLICABILITY OF TERMS

- 2.1 Unless otherwise expressly agreed in writing and signed by both Parties, the Contract constitutes the entire agreement and understanding between the Parties relating to the matters contemplated therein, and all conditions, terms and warranties, whether express or implied, are excluded if they are not expressly set out in the Contract.
- 2.2 All descriptions, illustrations and information contained in (a) Brenntag's catalogues, price lists, advertising matter and other publications and (b) labels attached or affixed to Brenntag's containers and packaging, or 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.
- 2.3 The Customer agrees that no action taken by Brenntag shall be interpreted as Brenntag accepting any contractual provisions proffered by the Customer.
- 2.4 The Sales Order Confirmation shall clearly state the quantity and grade of the Goods to be supplied. It is the Customer's sole responsibility to double-check the Sales Order Confirmation and to notify Brenntag immediately after the Customer's receipt of same should it contain any error or omission.
- 2.5 Should any conflict arise between the Sales Order Confirmation, with the exception of the Conditions, a quotation and/or estimate that Brenntag may have given, the Sales Order Confirmation shall prevail.

- 2.6 Should any conflict arise between these Conditions and the Special Conditions, the Special Conditions shall prevail;
- 2.7 This Contract shall at all times take precedence over any terms, conditions or stipulations contained in any of the Customer's documentation provided to Brenntag. Should the Customer in any way attempt to attach any conditions which vary, amend or are in conflict with the terms and conditions of this Contract then, notwithstanding anything to the contrary stipulated by the Customer, the terms and conditions of this Agreement shall prevail and be of full force and effect unless specifically varied by Brenntag in writing with specific reference to the Customer's documentation.

3 QUOTATIONS AND PRICES PROVIDED TO THE CUSTOMER AND ORDERS

- 3.1 Any quotation provided to the Customer is not an offer by Brenntag to sell the Goods to the Customer but merely constitutes an invitation by Brenntag to the Customer to do business with Brenntag.
- 3.2 A quotation may be revoked at any time by Brenntag. Brenntag may also accept or reject in whole or in part any order placed upon it by the Customer pursuant to the quotation. Accordingly, a contract shall only come into force between Brenntag and the Customer if after receipt by Brenntag of the Customer's order or acceptance of the quotation, Brenntag confirms to the Customer that such a contract has been concluded or if Brenntag supplied, or tenders to supply the Goods to the Customer.
- 3.3 Brenntag has the discretion at all times whether or not to sell / supply the Goods to the Customer.
- 3.4 Brenntag's quotations are based on, without limitation, insurance, transport, costs of labour and other materials and other charges prevailing at the date of the quotation. Any variation occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, shall entitle Brenntag to vary the amount of the quotation accordingly.
- 3.5 All quotations provided by Brenntag are valid

for a period of fourteen (14) days.

- 3.6 A transaction will only become effective when a Sales Order Confirmation has been dispatched by Brenntag to the Customer.
- 3.7 Brenntag cannot be held responsible for any error or omission in the Customer's Order.
- 3.8 Except as otherwise agreed in writing by Brenntag or as indicated in the Sales Order Confirmation or any Special Conditions, the price of the Goods will be that prevailing at the time of delivery stated as a price in Rand (ZAR) per ton, litre or kilogram as appropriate and shall exclude transportation, insurance, delivery (including Pumpover and any inspections required), container charges and unloading which shall be charged separately (if applicable) and shown separately on Brenntag's invoice.
- 3.9 Save as expressly stated otherwise by Brenntag in writing, prices are quoted by Brenntag exclusive of VAT, which Brenntag shall add at the prevailing rate.
- 3.10 Brenntag shall notify the Customer of any increase in the price of the Goods. The Customer may terminate its respective Order by giving Notice to Brenntag to this effect, within two (2) Business days after receipt of Brenntag's Notice. Where the Customer does not terminate its respective Order within two (2) Business days 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 Customer shall be bound to accept delivery of the Goods at the new price.
- 3.11 No orders will be processed without Brenntag being in receipt of an official order or written confirmation of the order. On Brenntag receiving the official order or written confirmation of the order, a Sales Order Confirmation will be provided by Brenntag

4 CREDIT

- 4.1 Brenntag shall, in its sole discretion, decide whether to grant credit facilities to the Customer. Should Brenntag grant such credit facilities, the nature and extent of such credit facilities shall be in the sole discretion of Brenntag.

- 4.2 Brenntag reserves the right to increase, decrease, suspend, withdraw or terminate any credit facility granted to the Customer at any time. Such decision shall be in Brenntag's sole discretion.
- 4.3 The Customer acknowledges that the account is personal to the Customer to whom the credit facilities are granted and the Customer may under no circumstances, allow any third party to trade with Brenntag on the Customer's account.
- 4.4 The Customer may not exceed any credit limit approved by Brenntag under this Contract. Should the Customer wish to make any purchase in excess of the Customer's credit limit or should the Customer wish to increase its credit limit, the Customer shall be required to make application to Brenntag for an increase in its credit limit. These terms and conditions shall, unless as otherwise agreed between the Parties in writing, apply equally in respect of such credit limit increase.
- 4.5 Should the Customer have previously made application to Brenntag for credit facilities and should the Customer have furnished any security to Brenntag for the due performance of the Customer's obligations to Brenntag on such previous occasion, the Customer records and acknowledges that the signature by it on this document shall not novate any prior security given by it to Brenntag.

5 OWNERSHIP AND RISK

- 5.1 Risk of damage to or loss of the Goods shall pass to the Customer at the Time of Delivery.
- 5.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Customer until Brenntag has received in cash or cleared funds payment in full of the price of the Goods.
- 5.3 Until such time as ownership of the Goods passes to the Customer, the Customer shall hold the Goods as Brenntag's fiduciary agent and shall keep the Goods separate from those of the Customer's and/or third parties, and keep the Goods 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 provided that the monies received therefore are assigned and made over immediately to Brenntag.

- 5.4 Until such time as ownership of the Goods passes to the Customer (and provided the Goods are still in separate identifiable existence) Brenntag shall be entitled at any time to require the Customer to deliver up the Goods to Brenntag and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 5.5 The Customer 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 Customer does so all monies owing by the Customer 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 Customer at any time on or after the time of delivery.
- 6.2 The Customer shall pay Brenntag's invoice by way of EFT (Electronic Funds Transfer) in full by the last working day of the month following the month in which the invoice is issued by Brenntag and time of payment shall be of the essence.
- 6.3 Brenntag shall be entitled to charge the Customer interest on any sums paid late from due date until the date of payment. Interest shall be calculated on a daily basis at the rate stipulated in the Customer Application Form.
- 6.4 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.
- 6.5 The Customer shall make no deduction from the invoice price on account of any set-off, claim or counterclaim unless both the validity and the amount thereof have been agreed to by Brenntag in writing.

- 6.6 Payments received from the Customer shall be placed against due or unpaid interest, then to unpaid fees or charges, and finally toward the payment due to Brenntag for the Goods.
- 6.7 In the event that the Customer has a cash account with Brenntag and has not submitted an application for credit or the Customer's application for credit has not been approved or the Customer's credit has been withdrawn, suspended or terminated or if Brenntag otherwise requires, the invoice price and any other charges which may be due to Brenntag in terms of this Agreement, shall be paid by the Customer in cash prior to the delivery or collection of the Goods.
- 6.8 Brenntag may require that the invoice price be secured by an unconditional and irrevocable letter of credit in favour of Brenntag which if required, shall be:

- 6.8.1 issued by a reputable banking institution;
- 6.8.2 in a form satisfactory to Brenntag;
- 6.8.3 be valid for the period required by Brenntag;
- 6.8.4 be for the sum of the invoice price together with all taxes, duties and any other amounts which may be due and payable by the Customer to Brenntag in terms of this Contract;
- 6.8.5 payable on proof of delivery of the Goods to the banking institution having issued the letter of credit.

- 6.9 Any variation to the Customer's payment terms shall be subject to the written approval of Brenntag.

7 DELIVERY

- 7.1 The Customer acknowledges that the delivery of the Goods is conditional upon the availability of the Goods ordered by the Customer.
- 7.2 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.

- 7.3 Brenntag shall not be obliged to make delivery at any specified time. The Customer shall be obliged to accept delivery from Brenntag during the hours of 8:30 a.m. and 4:30 p.m. on a Business Day or day on which the banks are open for a full range of transactions in the territory in which the Customer is situated (the "Normal Delivery Hours") if outside of South Africa. If the Customer requests that delivery take place at a specified time or outside the Normal Delivery Hours and same is recorded in the Sales Order Confirmation, Brenntag will use its reasonable endeavours to do deliver at the specified time. Brenntag may charge an additional amount for such delivery, at Brenntag's absolute discretion.
- 7.4 Unless otherwise agreed in writing and signed between the Parties, time shall not be of the essence with respect to any of Brenntag's obligations arising under the Contract.
- 7.5 Brenntag shall not be liable in respect of any loss incurred by the Customer arising from any delay in delivery of the Goods or performance of any Ancillary Service.
- 7.6 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.
- 7.7 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.
- 7.8 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 transporting vehicle.
- 7.9 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.
- 7.10 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.

- 7.11 The provisions of Clauses 7.4, 7.5, 7.6, 7.7, 7.8, and 7.9 above are subject to any contrary provision of the Sales Order Confirmation which may specify a different time of delivery. In case the Sales Order Confirmation specify a different Time of Delivery Sales Order Confirmation shall prevail.

8 DELIVERY BY INSTALMENTS AND COLLECTIONS

- 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 Customer.
- 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 (which is not remedied) shall not entitle the Customer to cancel the remainder of the Contract and shall not affect the obligations of the Customer in respect of the remainder of the Goods or the remainder of the Contract such as including but not limited to: withhold or defer payment of the invoice price or payment of any other amounts due by the Customer in terms of this Contract, nor a reduction in invoice price, nor to any other right or remedy against Brenntag, its servants, agents, or any other persons for whom it is liable in law whether for losses, costs, damages, expenses, interest or otherwise on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of Brenntag, its servants, agents or any other persons for whom it is liable in law or not.
- 8.3 If Brenntag is unable to deliver the Goods to the Customer due to any act or omission on the part of the Customer, Brenntag shall be entitled to, in its sole and absolute discretion, either:
- 8.3.1 charge the Customer for the storage of the Goods as well as any additional transportation costs, occasioned by Brenntag as a result thereof, readying the Goods for re-delivery and/or of re-delivering the Goods; or
- 8.3.2 terminate this Contract with immediate effect, dispose of the Goods in any manner which Brenntag deems fit and recover from the Customer, any loss and additional

costs incurred as a result of the Customer's act or omission.

- 8.4 A signed or stamped delivery note shall constitute *prima facie* proof that the Goods have been delivered to and received by the Customer whether signed by the Customer, an employee or a representative of the Customer.
- 8.5 If the Customer collects the Goods from Brenntag using its own transport or that of its agent, then the collection will be entirely at the Customer's risk and Brenntag will not be liable for any damage or loss of whatsoever nature occasioned by such collection.
- 8.6 Clauses 8.3, 8.3.1 and 8.3.2 above shall apply equally to the collection of Goods by the Customer from Brenntag.
- 8.7 Any party who collects Goods on behalf of the Customer must provide an official collection note from the Customer or must be duly authorised to collect by the Customer. Brenntag may request the party collecting the Goods to produce their identity documents and/or driver's license and Brenntag may take copies of the identity documents and/or driver's license and any other documents deemed appropriate by Brenntag.

9 SUITABILITY OF GOODS, STORAGE OF GOODS AND OFFLOADING FACILITIES

- 9.1 The Customer acknowledges that the Goods are generally sold in packaged form or sealed containers.
- 9.2 Should the Customer require any special packaging of the Goods or should any specific packaging be necessary for delivery of the Goods by any other means than Brenntag's normal means of delivery, the Customer shall be liable to make payment to Brenntag of the costs of such special packaging.
- 9.3 Should any license or consent of any nature whatsoever, be required for the purchase, sale, importation, carriage or use of the Goods by the Customer, the Customer shall obtain such license and consent at its own expense and provide same to Brenntag on demand. Any failure by the Customer to provide Brenntag with evidence of the license or consent shall entitle Brenntag to withhold or delay delivery of

the Goods to the Customer but shall not entitle the Customer to withhold or delay payment of the invoice price. Any additional expenses or charges incurred by Brenntag as a result, shall be for the Customer's account.

- 9.4 The Customer shall nominate the storage and offloading facilities for the Goods in its order to Brenntag and shall be solely responsible and liable to ensure that same are adequate and suitable.
- 9.5 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 Customer are inadequate, unsuitable or unsafe. 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 Customer's storage or offloading facilities.
- 9.6 Save as otherwise stated on the packaging of the Goods, the Goods do not comprise of and are not derived from any genetically modified organisms or products.

10 FORCE MAJEURE

- 10.1 In this Clause 10, a "**Force Majeure Event**" means an event beyond the reasonable control of the Party claiming the benefit of the clause (including the sub-contractors of Brenntag) including, without limitation:
 - 10.1.1 an act of God, war, riot, civil commotion, pandemic, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, strike or other industrial action by the employees of either Party;
 - 10.1.2 failure by any statutory organisation, utility company, local authority or like body to provide services;
 - 10.1.3 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; and/or

10.1.4 a Force Majeure declaration to Brenntag by a producer, supplier or seller of the Goods (or part thereof).

10.2 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 10 shall:

10.2.1 notify the other Party Notice in writing as soon as reasonably practicable of the said Force Majeure Event with reference to the:

10.2.1.1 nature of event;

10.2.1.2 estimated duration;

10.2.1.3 date on which it came to the attention of the Customer; and

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

be to use its reasonable endeavours to pass on to the Customer the warranties given to Brenntag by the seller of the Goods to Brenntag.

12 WARRANTY AND LIABILITY

12.1 Brenntag warrants that the Goods will for the shelf life specified for the Goods, comply with the specification as set out in Clause 11.1 above. If no specification has previously been supplied to the Customer, a specification will be supplied to the Customer on request and Brenntag warrants that the Goods will comply with that specification. Brenntag shall not assume any further warranty and shall especially not be liable for the suitability of the Goods for the intended purpose whatsoever. The Customer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose. To this end the Customer acknowledges that it is relying solely on the Customer's own skill and judgment and not on Brenntag when determining such suitability. Brenntag warrants that the Goods will for their shelf life comply with their specifications. If no specification has previously been supplied to a Customer, a specification will be supplied upon request and Brenntag will warrant that the Goods will comply with that specification.

12.2 Save as provided for in Clause 12.1 above, Brenntag shall not assume any further warranty and shall especially not be liable for the suitability of the Goods for the intended purpose whatsoever. The Customer is and shall remain solely responsible for satisfying itself as to the suitability of the Goods for any particular purpose, relying on its own skill and judgment.

12.3 The exclusions from and limitations of liability set out in this Clause 12 shall be considered severable. The validity or unenforceability of any one paragraph or sub-paragraph of this Clause 12 shall not affect the validity or enforceability of any other part of this Clause 12.

12.4 Brenntag warrants that the Goods to the best of its knowledge do not infringe on any right to any third party including, without limitation, any intellectual property rights of any third party, or applicable laws, statutes, regulations, codes or rules;

12.5 The provisions of this Clause 12 shall survive the

11 VARIATION IN SPECIFICATION

11.1 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 Sales Order Confirmation.

11.2 Brenntag shall be responsible for ensuring that the Goods when supplied are in accordance with the specification/s set out in Clause 11.1 where applicable, and without limitation, Brenntag shall not be under any obligation to test for any contaminant not envisaged by the specification/s.

11.3 Where the Goods are pre-packaged goods that are sold on by Brenntag in the same packaging as they are bought by Brenntag, then in place of Clauses 11.1 and 11.2 above, Brenntag's only obligation in relation to the specification/s shall

termination of the whole or a Part of the Contract. **13 SAMPLES**

12.6 The Customer may not rely on representations of any nature whatsoever made by Brenntag, its employees and/or its agents which allegedly induced the Customer to enter into this Agreement, unless the representation is recorded in writing in this Agreement.

12.7 The Customer and Signatory warrants that:

12.7.1 the Signatory is authorised to enter into this Agreement;

12.7.2 any signatory to any tax invoice, delivery note or other documentation of Brenntag made out in the name of, or to the Customer is duly authorised to bind the Customer in respect of the relevant transaction; and

12.7.3 the Customer is the entity that the Signatory represents it is;

12.7.4 all information provided to Brenntag herein is accurate, true and correct.

12.8 In the event of the Customer wishing to raise a dispute regarding the authority of any signatory to the aforesaid documents, the customer shall:

12.8.1 raise the said dispute no later than the end of the following business day after the delivery and/or being sent the said document;

12.8.2 tender return of any goods delivered as a consequence of any said documents;

12.8.3 failing which the customer is deemed to have waived its rights to rely on such a denial of authority.

12.9 Customer acknowledges that only a duly authorised director of Brenntag is authorised to grant any indulgence, waive any right in terms of this Contract, amend any terms of this Contract or enter into any other agreement with the Customer, and that such authority cannot be delegated to any other employee of Brenntag.

Except where the Goods are specifically ordered in writing against samples supplied by Brenntag and the Sales Order Confirmation expressly refers to those samples, any and all samples supplied by Brenntag are supplied for information only. Where the Customer requires an additional warranty that the Goods comply with such a sample, the Customer must communicate the same to Brenntag prior to the issue of a Sales Order Confirmation. The Sales Order Confirmation 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 Sales Order Confirmation.

14 CONTAINERS AND PALLETS

14.1 This Clause 14 shall only apply where containers or pallets belonging to Brenntag are used in connection with the delivery of the Goods.

14.2 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 invoice for the Goods and shall be paid for in full by the Customer when payment for the Goods is due.

14.3 All chargeable containers or pallets must be returned, at the Customers expense, to Brenntag in good and complete condition within three (3) months of receipt of same by the Customer.

14.4 A Customer 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.

15 INTELLECTUAL PROPERTY

15.1 The Customer hereby indemnifies and holds Brenntag harmless against all costs, claims, losses, expenses and damages incurred by Brenntag or for which it may become liable for, due to or arising directly or indirectly out of any infringement or alleged infringement of intellectual property right connected to the importation, manufacture or sale of Goods made to the specification or special requirements of the Customer.

15.2 Unless otherwise agreed in writing with Brenntag:

15.2.1 Brenntag shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Customer in connection with the Contract;

15.2.2 all Intellectual Property rights in or relating to the Goods shall (subject to any existing rights of any third party in any design or invention incorporated or used in the design of the Goods) be the exclusive property of Brenntag and neither the Customer nor any agent, contractor or other person authorised by the Customer shall at any time make any unauthorised use of those Intellectual Property rights.

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.

16.6 Subject to clauses 16.2 and 16.4 above, the Customer shall only be entitled to bring a claim against Brenntag where the Customer has first issued a Notice to Brenntag informing it of impending legal proceedings within the period that is the lesser of (a) the shelf life of the Goods and (b) the period of twelve (12) months commencing on the date upon which the Customer ought reasonably to have known of its entitlement to bring such a claim to enable Brenntag to carry out its own independent assessment of the Goods in question.

16 CLAIMS

16.1 The Customer shall conduct a diligent inspection of the Goods as soon as is practicable after the Time of Delivery.

16.2 In respect of patent defects with the Goods, the Customer shall give to Brenntag in writing before the end of the next Business day after the Time of Delivery, Notice of any claim for any defect, shortage, damage or loss to the Goods.

16.3 In respect of latent defects with the Goods, the Customer shall give to Brenntag in writing within a limitation period of 5 (five) business days after their discovery, Notice of any claim for any defect, shortage, damage or loss to the Goods subject to all latent defects having to be reported within 30 (thirty) days after delivery and in any case before use in any application.

16.4 If the Customer fails to give notice of a claim, the Goods shall be conclusively presumed to have been received and accepted by the Customer as being without any claim for any defect, shortage, damage or loss.

16.5 Notwithstanding clauses 16.2 and 16.4 above, if the claim is lodged based on a defect, loss, damage, or non-compliance with the Contract or non-delivery then Brenntag undertakes at its option without prejudice to Brenntag’s rights’ either to repair, reprocess or replace the items

17 HEALTH AND SAFETY AT WORK

17.1 Where required by law, Brenntag and the Customer will supply safety data sheets and other information to each other regarding the health and safety attributes of the Goods.

17.2 The Customer will comply with health and safety legislation. In particular but without limitation, the Customer 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:

17.2.1 an Unexpected Defect in the Goods;

17.2.2 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 Customer’s employees, contractors or agents, or a third party to whom the Customer has supplied the Goods);

17.2.3 a failure to comply with the Customer’s obligations under REACH.

In this Clause 17.2.1, an “Unexpected Defect” means a defect in the Goods other than a failure by the Goods to meet the specification indicated in the Sales Order Confirmation.

- 17.3 The Customer undertakes to ensure that all information provided or made available by Brenntag to the Customer 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 to and any conditions necessary to ensure that the use of the Goods will be without risks to health, shall be brought to the attention of all employees of the Customer and others involved in the use of the Goods. The Customer undertakes further to impose a similar requirement upon any third party to whom the Goods are sold and/or supplied.
- 17.4 The Customer shall promptly inform Brenntag of any incident of which the Customer 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.

18 EXPORT SALES

- 18.1 The provisions of this Clause 18 shall apply only where the Sales Order Confirmation indicates that an Incoterm applies to the Contract.
- 18.2 Depending on the applicable Incoterms, the responsible Party shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them, and the other Party shall furnish them upon request with any information and/or documentation and/or do all things reasonably necessary to ensure that Party's legal compliance.
- 18.3 Where Brenntag has agreed to invoice for the Goods in a currency other than Rand, Brenntag may at any time prior to delivery revise the price of the Goods to take account of any variation in exchange rates.
- 18.4 The Customer will bear the costs of foreign payments into Brenntag's banking account.

19 CESSION OF BOOK DEBTS

- 19.1 The Customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of Brenntag, all the Customer's right, title and interest in and to its claims against its debtors,

both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Customer may now or at any time in the future owe to Brenntag.

- 19.2 The Customer irrevocably authorises Brenntag, in its absolute discretion, to claim from all or any of the Customer's debtors the whole or any portion of the indebtedness of any one or more of them, to give a valid receipt or discharge for such indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors, to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.
- 19.3 The security created by the cession shall be a continuing one, notwithstanding any fluctuation in the amount of indebtedness of the Customer to Brenntag.
- 19.4 The Customer hereby undertakes on demand, to furnish Brenntag with such information concerning its debtors as may be reasonably required, to enable Brenntag to give effect to the provisions of this clause 19.

20 ELECTRONIC COMMUNICATIONS

- 20.1 Each Party, at its own expense, shall provide equipment, software and services and testing necessary to effectively and reliably electronically transmit and receive documents and where such documents are signed by means of an Electronic Signature.
- 20.2 Each party shall properly use security procedures which are reasonably sufficient to ensure that all electronic transmissions of documents are authorized and to protect its business records and data from improper access.
- 20.3 Any document properly transmitted pursuant to the terms hereof shall be considered to be "in writing" and shall constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

21 GENERAL LIMITATION OF LIABILITY AND INDEMNITY

- 21.1 The Customer acknowledges that Brenntag shall not be liable to the Customer or to any other person for any direct, indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the Parties or not which the Customer may suffer as a result of any breach by Brenntag of any of its obligations under this Agreement or arising from the sale and purchase of the Goods hereunder or arising from any other cause whatsoever.
- 21.2 To the extent that Brenntag is found to be liable to the Customer due to any reason whatsoever by a competent forum that has jurisdiction to adjudicate a dispute, Brenntag's liability shall be limited to the maximum total sum of the Goods purchased by the Customer from Brenntag in the previous 3 (three) months.
- 21.3 The Customer hereby indemnifies Brenntag and its employees, directors and agents against any claim that may arise against Brenntag as a result of the sale of the Goods and against any damage, either physical or economic or for which liability has been specifically excluded in clause 21.1 above, or from whatsoever cause.

22 SURETYSHIP

Initial Here

- 22.1 The Signatory, by his signature hereto, binds himself in favour of Brenntag, its successors-in-title and assigns as surety for and co-principal debtor with the Customer for the due and punctual performance by the Customer of all its obligations to Brenntag in terms of this Agreement.
- 22.2 The suretyship obligation is an unlimited obligation with regard to any and all present and future indebtedness already incurred or to be incurred by the Customer, notwithstanding any agreed limit from time to time.
- 22.3 This suretyship shall remain of full force and effect notwithstanding:
- 22.3.1 any indulgence, concession, leniency or extension of time which may be shown or given by Brenntag to the Customer;
- 22.3.2 any amendment/s to this Agreement and/or other agreement for the time

being existing between the Parties;

- 22.3.3 the surety hereby warrants that he has read and understood each term and condition of this Agreement and accepts it as binding on him.
- 22.4 The surety shall be liable for all costs incurred by Brenntag in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and client scale and costs of Counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 22.5 The surety shall forthwith furnish Brenntag with all information reasonably required by Brenntag. The surety warrants that the information given is true and correct in every respect. The surety undertakes to update the information furnished to Brenntag in order to ensure that the information is accurate and up to date.
- 22.6 Any judgment, whether formal or informal, in Brenntag's favour against the Customer shall, notwithstanding that the surety has not been joined in the proceedings giving rise to the judgment, preclude the surety from being entitled to dispute the merits of the claim in respect of which the judgment has been granted, in proceedings against the surety.
- 22.7 The surety acknowledges that he has been given an opportunity to read through, seek advice and ask questions on the contents of this clause 22, this Contract, the application for credit and his rights in terms of the National Credit Act 34 of 2005 ("NCA").

23 FURNISHING OF INFORMATION BY AND USE OF THE INFORMATION BY BRENNTAG

- 23.1 The Customer, the Signatory and its Principals hereby consent to the collection, processing, and use of all information provided to Brenntag in terms of this Contract and the sharing of such information with third parties for the purposes of verifying the information, carrying out and managing business operations, for legal reporting obligations, and any other legitimate purposes as Brenntag in its sole discretion

deems fit. For the purposes of this Contract, any reference to “information” shall include all information provided by the Customer and the Signatory in terms of this Agreement and personal information as defined in the Protection of Personal Information Act, 4 of 2013 (“POPI”).

23.2 The Customer, the Signatory and its Principals specifically:

23.2.1 authorises and consents to Brenntag carrying out credit checks and obtaining information regarding *inter alia*, its creditworthiness and dealings with other suppliers from any Credit Bureau which is registered as such in terms of section 43(1) of the NCA;

23.2.2 acknowledges and accepts that the Credit Bureau will keep a record of such search;

23.2.3 acknowledges and consents to Brenntag divulging information for market research or about the manner in which the Customer has conducted its account with Brenntag to other suppliers and to any registered Credit Bureau, or for insurance and assurance underwriting and administration or for any other related purpose;

23.2.4 acknowledges that in the event of the Customer defaulting with any of its obligations in terms of this Contract, Brenntag shall be entitled to report such default to any registered Credit Bureau and that such information may be used by other lenders in assessing any applications for credit made by the Customer.

23.3 The Customer and surety undertake to inform Brenntag in writing at least 30 (thirty) days prior to any intended sale or alienation of part or the whole of the Customer’s business or changing the principal and/or shareholding of or in the Customer’s business. The surety will remain liable to Brenntag for any amount payable to Brenntag notwithstanding the sale of the business to a third party, alternatively the surety is estopped from denying their liability, notwithstanding the sale or alienation or

transfer of part or the whole of the Customer’s business and membership interest and/or shareholding. Brenntag shall be entitled, in its sole discretion to terminate this Agreement upon the sale / alienation of part or the whole of the Customer’s business, upon the changing of the principal and/or shareholding of or in the Customer’s business.

23.4 The Customer, the Signatory and its Principals hereby agree to update their respective information in terms of the Financial Intelligence Centre Act, 38 of 2001, the NCA and POPI. Any failure to update information may at Brenntag’s sole discretion lead to a termination, reduction or suspension of the Customer’s credit facility with Brenntag.

24 ORIGINAL DOCUMENTATION

24.1 The Customer undertakes to deliver the original signed Application and Terms and Conditions of together with all information and/or documentation required by Brenntag, to Brenntag.

24.2 The Customer’s failure to deliver the documentation contemplated in Clause 24.1 above may at Brenntag’s sole discretion result in the Customer’s Application not being approved alternatively, to a termination, reduction or suspension of the Customer’s credit facility with Brenntag.

25 CONFIDENTIALITY

The Customer and Brenntag undertake that they will not at any time hereafter use, divulge or communicate to any person, except to their employees, Affiliates, professional representatives or advisers specifically on a need-to-know basis, 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 Customer and Brenntag shall use their reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

26 TERMINATION

26.1 If:

26.1.1 the Customer makes any voluntary arrangement with its creditors; is

placed into liquidation; sequestrated or goes into business rescue; and/or

- 26.1.2 the sheriff, a business rescue practitioner or debt counsellor takes possession of any of the property or assets of the Customer; and/or
- 26.1.3 the Customer ceases, or threatens to cease, to carry on business; and/or
- 26.1.4 Brenntag reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; and/or
- 26.1.5 any event takes place in any jurisdiction other than South Africa which is analogous to any of the above under this Clause 26; and/or
- 26.1.6 a Force Majeure event continues for more than two (2) months; and/or
- 26.1.7 the Customer is in breach of any material provision of the Contract and fails to remedy such breach within five (5) Business days of a notice from Brenntag indicating the breach and requiring the Customer to remedy the same.

then, without prejudice to any other right or remedy available to either Party, the other Party shall be entitled to cancel the Contract or (in Brenntag's instance) suspend any further deliveries under the Contract without any liability to the Customer.

- 26.2 Where Clause 26.1 above applies and if the Goods have been delivered but not paid for, payment therefore shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 26.3 The Customer may terminate an order on Notice below, at any time not less than one (1) Business day before the time that the Goods are scheduled in accordance with the Sales Order Confirmation to leave Brenntag's premises - provided always that where the Customer exercises this right, the Customer shall be liable to compensate Brenntag for all costs incurred by such termination. Brenntag may issue an

invoice for such costs at any time after such Notice of termination has been received.

27 CESSION

- 27.1 Brenntag shall be entitled to cede its rights and obligations in terms of this Contract without the consent of the Customer to any person or entity. Should Brenntag cede its claim against the Customer and the surety to any third party ("the Cessionary"), then the above Cession of Book Debts and Deed of Suretyship shall be deemed to have been given by the Customer and the surety to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such cession or at any time thereafter become owing by the Customer and/or the surety to the Cessionary, whether acquired by the Cessionary by way of cession or otherwise, and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Book Debts and Deed of Suretyship as if such cessionary were the supplier hereunder.
- 27.2 The Customer shall not be entitled to delegate or assign any right or obligation in terms of this Contract, nor cede any right or claim arising out of this Contract to any person.

28 GENERAL

- 28.1 Save in respect of a waiver granted in writing, the failure of Brenntag at any time to enforce a provision of this Contract shall not be deemed a waiver of such provision or of any other provision of this Contract or of Brenntag's right thereafter to enforce that or any other provision of this Contract. If a provision in this Contract is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:
 - 28.1.1 such unenforceability shall not affect the rest of this Contract; and
 - 28.1.2 the Parties shall in good faith amend and if necessary, novate this 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.

- 28.2 Nothing in the Contract shall create any joint venture, agency or partnership between Brenntag and the Customer.
- 28.3 Brenntag reserves the right to amend these Conditions. Subject hereto, variations to other documents which form part of the Contract must be made in writing and be signed by both Parties, in the case of Brenntag by a director as shown on Brenntag's Company Register.
- 28.4 Each Party shall at its own 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.
- 28.5 The Laws of the Republic of South Africa shall apply to the Contract.
- 28.6 If the Customer breached the Contract, whether or not Brenntag institutes legal action against it, the Customer **undertakes to pay, on demand, all legal costs which Brenntag incurs in attempting to recover any indebtedness, on an attorney and own client scale.**
- 28.7 **The Customer and the Signatory warrant that they have both read and understood the entire contents of this Contract and that they both do not dispute the entire contents of the aforementioned documents and that the Customer and Signatory accept the aforementioned documents as binding on each of them.**
- 28.8 Notwithstanding the fact that the amount in dispute may exceed the normal jurisdiction of the Magistrate's Court. Brenntag shall have the election but shall not be obliged to institute action in the Magistrate's Court.
- 28.9 The rule of construction that the agreement shall be interpreted against the party responsible for the drafting and preparation of the agreement, shall not apply.

29 NOTICE

- 29.1 Unless the Parties agree otherwise in writing, all notices and documents must be delivered by hand or electronic mail to the addresses set out in clause 1 of these Conditions.
- 29.2 Any notice or communication shall if delivered

by hand during business hours at that Party's selected physical address, be deemed to have been received on the date of delivery; if emailed to the selected email address, be deemed to have been received on the first business day following the date of transmission.

30 CERTIFICATE OF INDEBTEDNESS

The Customer agrees that the amount due and payable to Brenntag shall be determined and proven by a certificate issued by Brenntag and signed on its behalf by any person duly authorised by Brenntag, which authority need not be proven. Such certificates shall be binding and shall be *prima facie* proof of the indebtedness of the Customer.

31 DISPUTE RESOLUTION

31.1 In the event of a dispute arising in relation to the Contract, Brenntag may in its sole and absolute discretion agree to submit themselves to mediation, to be finalised within 10 (ten) days of the dispute being referred, and failing which to litigate by agreement by arbitration, subject to clause 31.2 below. In the event of a dispute arising which a Party contends is so urgent that it cannot be dealt with by way of mediation and/or arbitration in the normal course that Party will be entitled, but not obliged, to refer the matter to an appropriate Court bearing jurisdiction.

31.2 Subject to what is set out below, the arbitration shall be conducted in accordance with the Rules of the Arbitration Foundation of South Africa:

31.2.1 there shall be 1 (one) arbitrator who shall, if the question in issue is:

31.2.1.1 primarily an accounting matter, be an independent chartered accountant with not less than 10 (Ten) years' experience as a chartered accountant;

31.2.1.2 primarily a legal matter, be a practicing advocate of not less than 10 (Ten) years' standing;

31.2.1.3 or any other matter, a suitably qualified person;

- 31.2.2 the appointment of the arbitrator in clause 31.2.1 above shall be agreed upon by the Parties in writing or, failing agreement by the Parties within 5 (five) Business Days after the arbitration has been demanded, at the request of either of the Parties, shall be nominated by the Chair for the time being of the Arbitration Foundation of South Africa (or its successor body in title) situated in Johannesburg;
- 31.2.3 the Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein;
- 31.2.4 the arbitrator shall be obliged to give his award in writing fully supported by reasons;
- 31.2.5 the decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the High Court at the instance of any of the Parties to the dispute;
- 31.2.6 unless the arbitrator provides otherwise, costs, inclusive of counsel's fees, tracing agents costs, collection commission and costs incurred to pronounce on and execute on the judgment, shall follow the outcome.

The Signatory hereby warrants that he has read and understood the GENERAL TERMS AND CONDITIONS OF SALE INCLUDING DEED OF SURETYSHIP as set out below and that he fully understands that by placing his signature hereto, he is entering into the Deed of Suretyship as made provision for in clause 22 hereof.

FOR AND ON BEHALF OF THE APPLICANT (DULY AUTHORISED)		AS SURETY AND CO-PRINCIPAL DEBTOR	
Signature:		Signature:	
Full Name:		Full Name:	
Designation:		Designation:	
Identity Number / Passport Number:		Identity Number / Passport Number:	
Date:		Date:	
Witness 1:		Witness 1:	
Witness 1 Full Name:		Witness 1 Full Name:	
Witness 2:		Witness 2:	
Witness 2 Full Name:		Witness 2 Full Name:	