

# BRENNTAG

## GENERAL CONDITIONS OF SALE 2023

### 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

**Affiliate** means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

**Brenntag** means the Brenntag Group company referred to at the beginning of the Order Acknowledgement and if none then Brenntag UK Limited (registered in England under number 05262170) whose registered office is at Alpha House, Lawnswood Business Park, Redvers Close, Leeds, West Yorkshire, LS16 6QY;

**Bribery Laws** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

**Business Day** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

**Buyer** means any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Deliverables from Brenntag and whose details are set out in the Order;

**Conditions** mean Brenntag's terms and conditions of sale set out in this document;

**Confidential Information** means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which are obviously confidential or have been identified as such, or which are developed by the parties in performing its obligations under, or otherwise pursuant to the Contract;

**Contract** means the agreement between Brenntag and the Buyer for the sale and purchase of the Deliverables incorporating these Conditions and the Order;

**Control** has the meaning given to it in section 1124 of the Corporation Tax Act 2010;

**Data Protection Laws** mean, as binding on either party or the Services: the GDPR; the UK GDPR; the Data Protection Act 2018; any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

**Deliverables** means the Goods or Services or both as the case may be;

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

**GDPR** means the General Data Protection Regulation, Regulation (EU) 2016/679;

**Goods** means the goods and other materials set out in the Order Acknowledgement;

**Incoterms** means Incoterms 2020 as published by the International Chamber of Commerce in 2020 or such other edition in force at the date when the Contract is made;

**Intellectual Property Rights** means patents, registered and unregistered trademarks, registered designs, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up, know how, domain names, inventions, service marks, and database rights and like rights wherever situated in the world;

**Location** means the address(es) for delivery of the Goods and performance of the Services as set out in the Order Acknowledgement;

**Modern Slavery Policy** means Brenntag's anti-slavery and human trafficking policy in force and notified to the Buyer from time to time;

**MSA Offence** has the meaning given in clause 16.11(a)(i);

**Order** means the Buyer's order for the Deliverables;

**Order Acknowledgment** means the document entitled Order Acknowledgement generated by Brenntag and sent by post, fax or e-mail by Brenntag to the Buyer;

**Price** has the meaning given in clause 3.1(a);

**Pump Over** means the transfer of bulk fluids from Brenntag's transport into the Buyer's storage facilities;

**REACH** means European Union Regulation 1907/2006 on the Registration Evaluation, Authorisation and Restriction of Chemicals as amended from time to time and as retained in UK law via the European Union (Withdrawal) Act 2018, the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019, the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (as amended), and the REACH etc. (Amendment) Regulations 2021, all as amended from time to time;

**REACH Compliance** means in relation to Goods, compliance with the requirements of REACH and "REACH Compliant" shall be construed accordingly;

**Safety Legislation** means the Health and Safety at Work etc Act 1974 and all health and safety regulations for the purpose of the Health and Safety at Work etc Act 1974, the Consumer Protection Act 1987 and all regulations thereunder, the General Product Safety Regulations 2005 and all other local regulations or successive regulations which apply from time to time (including subordinate legislation and European Union and European Economic Area legislation to the effect that it has direct effect in member states) imposing legal requirements with respect to the safety of Goods, the handling, transportation, storage or disposal of Goods, labelling of Goods or goods incorporating the Goods, and the health and safety of the users of the Goods;

**Sanctions** means any laws or regulations relating to financial or trade sanctions, restrictive measures or trade embargoes;

**Sanctions Authority** means the United Kingdom's HM Treasury Office of Financial Sanctions Implementation, the European Union, the United States Department of the Treasury Office of Foreign Assets Control, the United Nations Security Council, or any other government authority that has jurisdiction over either party or the Services provided under these Conditions;

**Services** means the services set out in the Order and to be supplied by Brenntag to the Buyer;

**Special Conditions** mean such additional terms agreed from time to time in writing between Brenntag and the Buyer;

**Specification** means the description or specification of the Deliverables set out or referred to in the Order Acknowledgement;

**Time of Delivery** has the meaning given in clauses 6.5, 6.6, 6.7, 6.8, or 6.9 as the case may be;

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

**VAT** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

1.2 In these Conditions, unless the context otherwise requires:

- (a) a reference to the Contract includes these Conditions and any Special Conditions, the Order Acknowledgement, and their respective schedules, appendices and annexes (if any);
- (b) any clause, schedule or other headings in these Conditions or Special Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions or Special Conditions;
- (c) a reference to a 'party' means either Brenntag or the Buyer and includes that party's personal representatives, successors and permitted assigns;
- (d) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (e) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) a reference to a gender includes each other gender;
- (g) words in the singular include the plural and vice versa;
- (h) any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- (i) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- (j) without prejudice to the provisions of clause 20, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and
- (k) a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## 2 Application of these Conditions

2.1 Unless otherwise expressly agreed in writing by Brenntag, every Contract shall incorporate and be governed in all respects by these Conditions and any Special Conditions which shall prevail over any contractual provisions proffered by the Buyer in any correspondence, Order or other documentation, which shall have no application to the Contract unless otherwise agreed in writing by Brenntag,

The Buyer agrees that no action taken by Brenntag shall be interpreted as Brenntag accepting any contractual provisions proffered by the Buyer.

- 2.2 Brenntag's quotation is not to be taken as an offer and no Contract shall take effect unless and until an Order Acknowledgement has been despatched by Brenntag to the Buyer.
- 2.3 Brenntag will accept no responsibility whatsoever for any error or omission in the transmission of the Buyer's Order.
- 2.4 Brenntag shall be entitled to rely in all respects and in all circumstances on the contents of the Order Acknowledgement as stating the quantity and grade of the Goods that are to be supplied. Accordingly, it shall be the Buyer's sole responsibility to check the Order Acknowledgement and to notify Brenntag forthwith after the receipt of the same where the Goods are not properly stated in the Order Acknowledgement.
- 2.5 Where there is a conflict between the Order Acknowledgement and any quotation or estimate that Brenntag may have given, the Order Acknowledgement shall always prevail.
- 2.6 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Buyer.
- 2.7 Each Order by the Buyer to Brenntag shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.8 Brenntag may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier Brenntag's written acceptance of the Order through an Order Acknowledgement;
- 2.9 Rejection by Brenntag of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Buyer.
- 2.10 Brenntag may issue quotations to the Buyer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Buyer.

## 3 Price

- 3.1 Save as otherwise agreed in writing by Brenntag or as indicated in the Order Acknowledgment or any Special Conditions:
  - (a) the price for the Deliverables shall be that prevailing at the Time of Delivery, stated as a price in sterling per tonne, litre or kilogram as appropriate (**Price**); and
  - (b) Unless otherwise agreed in writing by Brenntag, the Prices are exclusive of:
    - (i) transportation, insurance, packaging, delivery (including Pump Over and any inspections required), container charges and unloading, which shall be charged separately (if applicable) and shown on Brenntag's invoice. ;
    - (ii) VAT (save as expressly stated otherwise by Brenntag in writing and which Brenntag shall add at the appropriate prevailing rate); and

- (iii) all other applicable taxes, customs duties, tariffs, levies and similar fees in the which shall be for the account of the Buyer at the relevant rates from time to time and, to the extent they are paid by Brenntag, the Buyer shall reimburse Brenntag.
- 3.2 The Buyer shall pay any applicable VAT to Brenntag on receipt of a valid VAT invoice.
- 3.3 Brenntag shall be entitled to charge the Buyer interest on any sums paid late under a Contract from the due date until the date of payment and claim compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 (as amended from time to time). Such interest shall be calculated on a daily basis after as well as before any judgment. In addition, the Buyer will reimburse all costs and expenses, including but not limited to legal expenses incurred in the collection of any overdue amount.
- 3.4 Brenntag may increase the Prices with immediate effect by written notice to the Buyer not less than two (2) days prior to delivery of the Goods where: (i) there is an increase in the direct cost to Brenntag of supplying the relevant Deliverables which is due to any factor beyond the control of the Brenntag; or (ii) delivery or performance of the Deliverables is delayed as a result of any acts or omissions of the Buyer which results in additional costs for Brenntag.
- 3.5 Brenntag shall notify the Buyer of any increase in the price of the Goods. The Buyer may terminate the Contract by giving notice to Brenntag promptly after receipt of any such notice. Where the Buyer does not terminate the Contract promptly after receipt of any such notice and in any event twenty-four (24) hours before the time that the Goods are scheduled to leave Brenntag's premises, the Buyer shall be bound to accept the delivery of the Goods at the new price.
- 4 Payment**
- 4.1 Brenntag shall be entitled to submit an invoice to the Buyer at any time on or after the Time of Delivery. Upon written request by the Buyer, Brenntag may agree to submit a consolidated invoice to the Buyer. If used each consolidated invoice will quote the relevant Order numbers.
- 4.2 The Buyer shall pay Brenntag's invoice in full and in cleared funds by the 30th day from the date of invoice issued by Brenntag and time of payment shall be of the essence of the Contract.
- 4.3 Notwithstanding the provisions of clauses 4.1 and 4.2 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.
- 4.4 If the Buyer disputes any invoice or other request for payment, the Buyer shall immediately notify Brenntag in writing giving its reasons why. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Brenntag shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
- 4.5 Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 4.2. If part of a consolidated invoice is disputed, the undisputed amounts shall be paid on the due date as set out in clause 4.2. The Buyer may not use a dispute over part of a consolidated invoice to withhold payment of the full amount of the consolidated invoice.
- 4.6 In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 4.7 The Buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been admitted by Brenntag in writing.
- 4.8 In the event that any invoice is overdue or the Buyer becomes subject to any of the events in clause 22.2 then:-
- (a) all outstanding invoices will fall due for immediate payment whether or not the payment terms have been exceeded and the full amount outstanding shall become due; and
  - (b) Brenntag reserves the right in its absolute discretion to cancel any existing contracts or to suspend delivery of all further Goods until the outstanding invoice(s) are settled.
- 4.9 In the event that the Buyer makes an overpayment for any reason, such overpayment will be notified to the Buyer in the statement of account issued by Brenntag over a period of twelve (12) months starting from the month of the overpayment, once discovered by Brenntag or notified by the Buyer. The Buyer shall have the right to request that the overpayment(s) are used as credit in relation to later Orders or that the overpayment(s) are returned to the Buyer in which case the provisions of clause 4.10 will apply. Any requests under this clause 4.9 shall be submitted in writing and shall be subject to agreement from Brenntag.
- 4.10 In the event of a request from the Buyer that an overpayment is refunded, Brenntag will only issue a refund relating to the overpayment sum provided there are no other monies outstanding at the time the overpayment refund is requested. If there are any monies past due for payment Brenntag shall be entitled to deduct such monies from the refund. No interest will be payable. The refund for the overpayment:-
- (a) where the request is made within 6 months of the overpayment will be less a £20 administration fee and any bank charges; and
  - (b) where the request is made more than 6 months after the overpayment will be less a £50 administration fee and any bank charges.
- 5 Credit limit**
- Brenntag may set and vary credit limits from time to time and withhold all further supplies if the Buyer exceeds such credit limit.
- 6 Delivery and performance**
- 6.1 Where Brenntag agrees or states a specified delivery date, Brenntag shall use reasonable endeavours to deliver on or before the relevant date.
- 6.2 Brenntag shall not be obliged to make delivery at any specified time. The Buyer shall be obliged to accept any delivery during the hours of 8:30 a.m. and 4:30 p.m. on a day on which the banks are open for a full range of transactions in the territory in which the Buyer is situated (the "**Normal Delivery Hours**"). If the Buyer requests that delivery take place at a specified time or outside the Normal Delivery Hours and the same is recorded in the Order Acknowledgement, Brenntag will use its reasonable endeavours to deliver at the specified time. Brenntag may charge an additional amount for such delivery, at Brenntag's absolute discretion.

- 6.3 Time shall not be of the essence with respect to any of Brenntag's obligations arising under the Contract.
- 6.4 Brenntag shall not be liable in respect of any loss incurred by the Buyer arising from any delay in delivery of Deliverables.
- 6.5 Where the Goods are delivered by Brenntag by road tanker or similar vehicle, the Time of Delivery shall be when the Goods pass the final flange on the road tanker.
- 6.6 Where the Goods are delivered by Brenntag by drum or other container, the Time of Delivery shall be when the Goods are removed from the transporting vehicle.
- 6.7 Where the Goods are collected from Brenntag by drum or other container, the Time of Delivery shall be when the Goods are lifted over the side of the Buyer's transporting vehicle.
- 6.8 Where the Goods are collected from Brenntag's storage tank or site, in a road tanker or similar vehicle, the Time of Delivery shall be when the Goods pass the final flange of Brenntag's storage tank.
- 6.9 Where the Goods are delivered in some manner other than as specified in clauses 6.5, 6.6, 6.7, and 6.8 above, the Time of Delivery shall be when the Goods leave Brenntag's premises.
- 6.10 The provisions of clauses 6.5, 6.6, 6.7, 6.8 and 6.9, above are subject to any contrary provision of the Order Acknowledgement which may specify a different Time of Delivery. Without limitation, the Order Acknowledgement may specify that an Incoterm applies in which event the Time of Delivery shall be when delivery is effected as stated in that Incoterm (and if none is so stated, then in accordance with the provisions of clauses 6.4, 6.5, 6.6, 6.8 and 6.9).
- 6.11 Where the Goods are handed to a carrier for carriage to the Buyer or to a United Kingdom port for export any such carrier shall be deemed to be an agent of Brenntag and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 6.12 The Buyer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to Products sent by Brenntag.
- 6.13 The Buyer shall not be entitled to reject the Goods if Brenntag delivers up to and including 5% more or less than the quantity of Goods ordered.
- 6.14 The Services shall be performed by Brenntag at the Location on the date(s) specified in the Order Acknowledgement. The Services shall be deemed delivered by Brenntag only on completion of the performance of the Services at the Location.
- 6.15 Brenntag may deliver or perform the Deliverables in instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between Brenntag and the Buyer. Any delay in performance or defect in an instalment shall not entitle the Buyer to cancel any other instalment and shall not affect the obligations of the Buyer in respect of the remainder of the Contract.
- 6.16 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
- (a) the date of the Order;
  - (b) the relevant Buyer and Brenntag details;
  - (c) if Goods, the product code and type and quantity of Goods in the consignment;
  - (d) if Services, description of Services performed;
  - (e) any special instructions, handling and other requests; and
  - (f) in the case of Goods, whether any packaging material is to be returned, in which case the Buyer shall, after the Goods are unpacked, make them available for collection by Brenntag.
- 6.17 Time is not of the essence in relation to the performance or delivery of the Deliverables. Brenntag shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.
- 6.18 Where any delay in delivery of the Goods is caused by the Buyer including but not limited to:
- (a) the Buyer's failure to: (i) make the Location available; (ii) prepare the Location as required for the Deliverables; or (iii) provide Brenntag with adequate instructions for performance or delivery; or
  - (b) Force Majeure;
- Brenntag shall be entitled to charge the Buyer all proper costs arising out of such delay, including without limitation the cost of returning the Goods to Brenntag's premises, of storing the Goods and of re-delivering the Goods; and the wasted cost of having personnel and materials ready to deliver the service.
- 6.19 Notwithstanding clause 6.18, and subject to any contrary provision that Brenntag may agree to in writing, the Buyer shall be entitled to re-schedule on not more than one occasion delivery of the Goods by giving Brenntag reasonable notice in writing so to do.
- 7 Risk**
- Risk in the Goods shall pass to the Buyer at the Time of Delivery.
- 8 Title**
- 8.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the Title to the Goods shall pass to the Buyer only once Brenntag has received payment in full and cleared funds for the Goods and any other goods or services that Brenntag has supplied to the Buyer.
- 8.2 Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods as Brenntag's fiduciary agent and bailee for Brenntag;
  - (b) store the Goods separately from all other material in the Buyer's possession
  - (c) take all reasonable care of the Goods and keep them properly stored and protected in the condition in which they were delivered;
  - (d) insure the Goods from the date of delivery: (i) with a reputable insurer; (ii) against all risks; (iii) for an amount at least equal to their Price (iv) noting the Brenntag's interest on the policy;
  - (e) ensure that the Goods are clearly identifiable as belonging to Brenntag;
  - (f) not remove or alter any mark on or packaging of the Goods;

- (g) inform Brenntag immediately if it becomes subject to any of the events or circumstances set out in clauses 22.1(a) to 22.1(c) or 22.2(c); and
- (h) on reasonable notice permit Brenntag to inspect the Goods during the Buyer's normal business hours and provide Brenntag with such information concerning the Goods as Brenntag may request from time to time.

8.3 Notwithstanding clause 8.2, the Buyer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 22.1(a) to 22.1(c) or 22.2(c) has occurred or is likely to occur.

8.4 If the Buyer resells the Goods in accordance with clause 8.3, title to the Goods shall pass to the Buyer immediately prior to the resale.

## 9 Variation in Specification

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

9.2 Brenntag shall be responsible for ensuring that the Goods when supplied are in accordance with the specification as set out in clause 9.1. Brenntag shall not be obliged to undertake any tests not relating to the specification. Without limitation, Brenntag shall not be under any obligation to test for any contaminant not envisaged by the specification.

9.3 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 9.1 and 9.2 above, Brenntag's only obligation shall be to use its reasonable endeavours to pass on to the Buyer the warranties given to Brenntag by the seller of the Goods to Brenntag.

9.4 Brenntag may by giving written notice to the Buyer, vary the specification of the Goods at any time. The Buyer may terminate the Contract by giving notice promptly after receipt of any such notice.

## 10 Indemnity and insurance

10.1 The Buyer shall indemnify, and keep indemnified, Brenntag from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Brenntag as a result of or in connection with the Buyer's breach of any of the Buyer's obligations under the Contract.

10.2 The Buyer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Buyer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## 11 Warranty and Liability

11.1 The Buyer warrants that it has provided Brenntag with all relevant, full and accurate information as to the Buyer's business and needs where applicable to the Order.

11.2 Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise, howsoever arising, are excluded to the fullest extent permitted by law. The Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular

purpose and the Buyer acknowledges that it is relying solely on the Buyer's own skill and judgment and not Brenntag's in determining such suitability. Brenntag warrants that the Goods will for the shelf life specified for the Goods, comply with the specification as set out in clause 9.1 above. If no specification has previously been supplied to the Buyer, a specification will be supplied to the Buyer on request and Brenntag warrants that the Goods will comply with that specification.

11.3 The following provisions in this clause 11 set out Brenntag's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Buyer in respect of:-

- (a) a breach of Brenntag's contractual obligations;
- (b) a tortious act or omission for which Brenntag is liable; or
- (c) an action arising out of a misrepresentation made by or on behalf of Brenntag, arising in connection with the performance or contemplated performance of the Contract or out of an act done or omission made as a consequence of the entry into the Contract by Brenntag.

11.4 Brenntag's total liability to the Buyer for:

- (a) physical damage to the Buyer's buildings or immovable plant caused by the negligence of its employees in connection with the Contract shall be limited to £100,000 (one hundred thousand pounds) for any one event or series of connected events; and
- (b) all other loss or damage arising under or in connection with the Contract shall in no circumstances exceed twice the price of the Goods unless agreed otherwise by Brenntag and set out in the Order Acknowledgement or any Special Conditions.

11.5 Brenntag shall in no circumstances be liable to the Buyer for any:-

- (a) pure economic loss;
- (b) loss of profit;
- (c) loss of business;
- (d) loss of contracts;
- (e) indirect loss.

11.6 The Buyer shall only be entitled to bring a claim against Brenntag where the Buyer issues legal proceedings against Brenntag within the period that is the lesser of (i) the shelf life of the Goods and (ii) the period of twelve (12) months commencing on the date upon which the Buyer ought reasonably to have known of its entitlement to bring such a claim.

11.7 The exclusion of liability referred to in this clause 11 does not apply so as to exclude or limit Brenntag's liability for:-

- (a) death or personal injury caused by negligence of Brenntag, its servants or agents; or
- (b) damage for which Brenntag is liable to the Buyer under Part I of the Consumer Protection Act 1987;
- (c) breach of Brenntag's implied undertaking as to title to the Goods contained in Section 12 of the Sale

Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

- (d) fraud or fraudulent misrepresentation; or
- (e) any other losses which cannot be excluded or limited by applicable law.

save that nothing in this clause 11 shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.

11.8 The exclusions from and limitations of liability set out in this clause 11 shall be considered severable. The validity or unenforceability of any one paragraph or sub-paragraph of this clause 11 shall not affect the validity or enforceability of any other part of this clause 11.

11.9 The provisions of this clause 11 shall survive the termination of the whole or a part of the Contract.

## 12 Samples

Except where the Goods are specifically ordered in writing against samples supplied by Brenntag and the Order Acknowledgement expressly refers to those samples, any and all samples supplied by Brenntag are supplied for information only. Where the Buyer requires an additional warranty that the Goods comply with such a sample, the Buyer must communicate the same to Brenntag prior to the issue of an Order Acknowledgement. The Order Acknowledgement shall refer to any additional warranty (in the form of an additional specification) to which Brenntag may agree. Brenntag does not give any further warranty about compliance of the Goods with any sample other than in respect of the specification contained in the Order Acknowledgement.

## 13 Containers and Pallets

13.1 This clause 13 shall only apply where containers or pallets belonging to Brenntag are used in connection with the delivery of the Goods.

13.2 The value of all chargeable containers or pallets used in connection with the delivery of the Goods will be shown as a separate item on Brenntag's sales invoice for the Goods and shall be paid for in full by the Buyer when payment for the Goods is due.

13.3 All chargeable containers or pallets returned, at the Buyers expense to Brenntag, in good and complete condition, within two (2) months of receipt by the Buyer, may be eligible for a credit to be used against purchases of Goods within twelve (12) months of the date of award of such credit. If such credit is not used within that period, it shall lapse. Brenntag shall have no obligation to accept the return of containers or pallets that are in any way damaged.

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

## 14 Intellectual property

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

14.2 Unless otherwise agreed in writing with Brenntag:-

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

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

## 15 Claims

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

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

15.3 The provisions of this clause 15 shall only apply where any claim for any defect, shortage, damage or loss to the Goods is apparent on visual inspection.

## 16 Legislative Compliance

### General Compliance with law

16.1 The Buyer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

### Health and Safety at Work

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

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

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

(b) a failure to use the Goods in accordance with the Safety Legislation or with the information regarding the health and safety attributes of the Goods supplied by or on behalf of Brenntag (whether such failure is on the part of the Buyer's employees,

contractors or agents, or a third party to whom the Buyer has supplied the Goods)

Offence or prosecution under the Modern Slavery Act 2015; or

- (c) a failure to comply with the Buyer's obligations under REACH.

- (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

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

- (b) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and

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

- (c) it shall notify the Brenntag immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Buyer's obligations under clause 16.11. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Buyer's obligations.

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

### Sanctions Compliance

16.12 The Buyer warrants and represents that

- (a) neither it nor any director or any person that owns or holds a controlling interest in the Buyer, is designated under any list of sanctions targets maintained by a Sanctions Authority;
- (b) it is not engaged in any activity in breach of applicable Sanctions adopted and maintained by a Sanctions Authority;
- (c) it is not engaged in any activity in breach of applicable Sanctions adopted and maintained by a Sanctions Authority; and
- (d) the Services shall not be used to facilitate any payments to or dealings with any person that is subject to Sanctions adopted and maintained by a Sanctions Authority, or which would otherwise breach applicable Sanctions.

### Anti-bribery

16.7 For the purposes of clauses 16.7 to 16.10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

16.8 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

- (a) all of that party's personnel;
- (b) all others associated with that party; and
- (c) all of that party's subcontractors;

16.13 The provisions in clauses 16.12 shall apply other than to the extent where this would result in a violation of the UK's Protecting of Trading Interests legislation or Council Regulation (EC) No 2271/96 as amended.

involved in performing the Contract so comply.

16.9 Without limitation to clause 16.8, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

16.14 The Buyer shall fully and effectually indemnify Brenntag against any costs, claims, losses, expenses and damages incurred by Brenntag or for which it may be liable due to or arising directly or indirectly out of any breach of the obligations in this clause 16.

16.10 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in these clause 16.7 to 16.9

### 17 Investigation

In the event of any actual or suspected defect, contamination, health and safety or similar issue arising in connection with the Goods, the Buyer shall grant to Brenntag reasonable access to its premises to conduct an investigation and shall provide to Brenntag reasonable cooperation in respect of such investigation. Where the Buyer has onward sold the Goods to its own customer, the Buyer shall procure the equivalent access and cooperation from the Buyer's customer.

### Anti-slavery

16.11 The Buyer undertakes, warrants and represents that:

- (a) neither the Buyer nor any of its officers, employees, agents or subcontractors has:
- (i) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**);
- (ii) been notified that it is subject to an investigation relating to an alleged MSA

### 18 Export Sales

18.1 The provisions of this clause 18 shall apply only where the Order Acknowledgement indicates that an Incoterm applies to the Contract.

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

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

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

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

## 19 Confidentiality and announcements

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

- (a) any information which was in the public domain at the date of the Contract;
- (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- (c) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

except that the provisions of clauses 19.1(a) to **Error! Reference source not found.**(c) shall not apply to information to which clause 19.3 relates.

19.2 The Buyer shall not make any public announcement or disclose any information regarding the Brenntag, Contract, Goods or Services, except to the extent required by law or regulatory authority but in such circumstances the prior written agreement of a Director of Brenntag must be obtained.

19.3 To the extent any Confidential Information is Personal Data as defined in the Data Protection Laws, such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 20.

## 20 Processing of personal data

20.1 The parties shall at all times comply with all Data Protection Laws in connection with the Contract. Nothing in the Contract relieves either party of any responsibilities or liabilities under any Data Protection Laws.

20.2 Brenntag may need to process personal data about the Buyer and/or its employees pursuant to the Contract, such as contact details, as further described in the Privacy Notice provided to the Buyer when the data is collected and available on Brenntag's website [Privacy Policy | Brenntag](#). By entering into these terms, the Buyer confirms that it has read and understood this Privacy Notice and agrees that it will ensure that any of its employees whose personal data Brenntag may process pursuant to this Contract will be provided with the information contained in this Privacy Notice prior to Brenntag processing their personal data.

## 21 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from a Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract. The party subject to the Force Majeure Event shall notify the other party in writing as soon as reasonably practicable when such the event causes a delay or failure in performance and when it ceases to do so and shall use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the said failure or delay. If the Force Majeure Event continues for a continuous period of more than 30 days, Brenntag may terminate the Contract by written notice to the Buyer.

## 22 Termination

22.1 Brenntag may terminate the Contract immediately at any time by giving notice in writing to the Buyer if:

- (a) the Buyer commits a material breach of the Contract and such breach is not remediable; or the Buyer commits a material breach of the Contract which is not remedied within 30 days of receiving written notice of such breach. For the avoidance of doubt, a breach of clause 16 shall be material for the purposes of this clause.
- (b) the Buyer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after Brenntag has given notification that the payment is overdue; or
- (c) any consent, licence or authorisation held by the Buyer is revoked or modified such that the Buyer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

22.2 Brenntag may terminate the Contract at any time by giving notice in writing to the Buyer if the Buyer:

- (a) makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or has an administrator or administrative receiver appointed over the whole or any part of its assets;
- (b) an encumbrancer takes possession, or a receiver is appointed in respect of any of the property or assets of the Buyer;
- (c) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- (d) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986;
- (e) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (f) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (g) has a resolution passed for its winding up;
- (h) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;



- (i) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - (j) has a freezing order made against it;
  - (k) is subject to any recovery or attempted recovery of items supplied to it by a Brenntag retaining title in those items;
  - (l) is subject to any events or circumstances analogous to those in clauses 22.2 to 22.2 (k) in any jurisdiction;
  - (m) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 22.2(a) to 22.2 (l) (or Brenntag reasonably apprehends that any of these events is about to occur and notifies the Buyer accordingly) including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process. Where Clause 22.2 applies, then, without prejudice to any other right or remedy available to Brenntag, Brenntag shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer.
- 22.3 Where clause 22.2 applies and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 22.4 Brenntag may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Buyer if the Buyer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 22.5 If the Buyer becomes aware that any event has occurred, or circumstances exist, which may entitle Brenntag to terminate the Contract under this clause 22, it shall immediately notify Brenntag in writing.
- 22.6 The Buyer may terminate the Contract at any time not less than twenty-four (24) hours before the time that the Goods are scheduled to leave Brenntag's premises, provided always that where the Buyer exercises this right, the Buyer shall be liable to compensate Brenntag for costs incurred prior to receipt by Brenntag of notice of such termination. Brenntag may issue an invoice for such costs at any time after such notice of termination has been received.
- 22.7 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Brenntag at any time up to the date of termination.
- 23 Dispute resolution**
- 23.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 23.
- 23.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 23.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- (a) Within seven days of service of the notice, the contract managers (or other appropriate senior personnel) of the parties shall meet to discuss the dispute and attempt to resolve it.
  - (b) If the dispute has not been resolved within seven days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.
- 23.4 The specific format for the resolution of the dispute under clause 23.3(a) and, if necessary, clause 23.3(b) shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 23.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 23.3(b) then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 23.6 Until the parties have completed the steps referred to in clauses 23.3 and 23.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.
- 24 Notices**
- 24.1 Any notice or other communication given by a party under these Conditions shall:
- (a) be in writing and in English;
  - (b) be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - (c) be sent to the relevant party at the address set out in the Contract
- 24.2 Notices may be given, and are deemed received:
- (a) by hand: on receipt of a signature at the time of delivery;
  - (b) by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
  - (c) by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
  - (d) by email provided confirmation is sent by first class post: on receipt of a delivery receipt email from the correct address.
- 24.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 24.1 and shall be effective:
- (a) on the date specified in the notice as being the date of such change; or
  - (b) if no date is so specified, 5 Business Days after the notice is deemed to be received.
- 24.4 All references to time are to the local time at the place of deemed receipt.
- 24.5 This clause does not apply to notices given in legal proceedings or arbitration.

<p><b>25 Cumulative remedies</b></p> <p>The rights and remedies provided in the Contract for Brenntag only are cumulative and not exclusive of any rights and remedies provided by law.</p> <p><b>26 Further assurance</b></p> <p>The Buyer shall at the request of Brenntag, and at the Buyer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.</p> <p><b>27 Entire agreement</b></p> <p>27.1 All descriptions, illustrations and information contained in:-</p> <p>(a) Brenntag's catalogues, website, price lists, advertising matter and other publications;</p> <p>(b) labels attached or affixed to Brenntag's containers and packaging; or</p> <p>(c) any other collateral item relating to the Goods;</p> <p>shall be regarded as approximate only and are to present merely a general idea of the Goods or Services described in them and shall not form part of the Contract or be deemed to import any warranty regarding the Goods, unless and to the extent that the contrary is expressly agreed in writing by Brenntag.</p> <p>27.2 The parties agree that the Contract and any documents entered into pursuant to it, constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.</p> <p>27.3 Each of the parties acknowledge that it is not entering into the Contract in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in the Contract and the documents referred to in it) made by or on behalf of any other party before the execution of the Contract. Each of the parties waives all rights and remedies which, but for this clause, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause 27 shall limit or exclude any liability for fraud</p> <p><b>28 Variation</b></p> <p>All variations to any Contract or to these Conditions must be made in writing and be signed by both parties and in the case of Brenntag by a director as shown on Brenntag's records at Companies House. Each party shall at its own 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.</p> <p><b>29 Assignment</b></p> <p>29.1 The Buyer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Brenntag's prior written consent.</p> <p>29.2 Brenntag may assign the benefit and subcontract the performance of its obligations as it sees fit, provided always that Brenntag shall remain responsible for the acts and omissions of its subcontractors.</p> <p>29.3 [Notwithstanding clause 29.1, the Buyer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Brenntag prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Buyer acknowledges and agrees that any act or omission of its Affiliate in relation to the Buyer's rights or</p>	<p>obligations under the Contract shall be deemed to be an act or omission of the Buyer itself.]</p> <p><b>30 Set off</b></p> <p>30.1 Brenntag shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Buyer under the Contract or under any other contract which Brenntag has with the Buyer.</p> <p>30.2 The Buyer shall pay all sums that it owes to Brenntag under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.</p> <p><b>31 No partnership or agency</b></p> <p>The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.</p> <p><b>32 Equitable relief</b></p> <p>The Buyer recognises that any breach or threatened breach of the Contract may cause Brenntag irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Brenntag, the Buyer acknowledges and agrees that Brenntag is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.</p> <p><b>33 Severance</b></p> <p>33.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.</p> <p>33.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.</p> <p><b>34 Waiver</b></p> <p>34.1 Except in respect of a waiver granted by Brenntag in writing, no failure, delay or omission by Brenntag in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.</p> <p>34.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by Brenntag shall prevent any future exercise of it or the exercise of any other right, power or remedy by Brenntag.</p> <p><b>35 Conflicts within contract</b></p> <p>If there is a conflict between the terms contained in the Conditions and the terms of the Order Acknowledgement, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.</p>
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**36 Costs and expenses**

The Buyer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

**37 Third party rights**

37.1 Except as expressly provided for in clause 37.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

37.2 Any Affiliate of Brenntag shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

**38 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

**39 Jurisdiction**

The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation including non-contractual disputes or claims).