



**TERMS & CONDITIONS OF SALE**  
AS OF APRIL 15<sup>TH</sup>, 2019

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# TERMS & CONDITIONS OF SALE

## 1. GENERAL TERMS AND CONDITIONS

These Terms and Conditions of Sale (the "**T&C**") apply to all agreements between **Olenex Sàrl**, Rolle, Switzerland ("**Olenex**") and a customer ("**Purchaser**") for the sale and delivery of goods from Olenex ("**Goods**").



## 2. GENERAL

### 2.1. Scope of application

Except as otherwise agreed between Olenex and the Purchaser in writing, these T&C shall apply to all offers, orders and confirmations with respect to the supply of Goods by Olenex to the Purchaser. These T&Cs shall prevail over any other terms and conditions of the Purchaser and/or industry terms and conditions, contained in or referred to in the orders, correspondence or elsewhere and this notwithstanding any provisions to the contrary in such terms and conditions, unless expressly agreed between Olenex and the Purchaser in writing.

Any subsidiary verbal arrangements are subject to confirmation in writing by Olenex. The failure on the part of the Purchaser to return the counter-signed sales confirmation and/or contract to Olenex shall not affect the validity of the terms stated above and hereinafter. Hereinafter individual sales confirmations and individual contracts (by e-mail, facsimile or other written means excluding verbal agreements) shall be referred to as the “**Contract**” and the “**Contracts**” respectively.



## 3. DELIVERY

### 3.1. Scope of duty to deliver

Delivery shall be made according to the respective delivery terms (Incoterms or otherwise as may be agreed) and the delivery period, agreed by the parties and specified in the Contracts.

Olenex shall be entitled to make partial deliveries. In the event of several Contracts being processed at the same time, with the same subject matter and delivery period, Olenex shall exercise its equitable discretion in determining the sequence of performance. Olenex shall be entitled at all times to supply goods equivalent in quality to its own, subject to the provision that the goods shall in every respect be at least equal or superior in quality. In the case of delivery ex-Olenex plant, the Purchaser shall accept delivery in accordance with the production and safety requirements, Working Days, etc. of the Olenex supplying plant. Olenex can choose to deliver the Goods from other locations than those specified in the Contract, subject to compensation the other party the difference in freight, if any.

For the purpose of these T&Cs, "**Working Days**" shall mean Monday to Friday, excluding statutory and customary public holidays at the place of loading or shipment.

### 3.2. Shipping orders

The Purchaser must issue a shipping order at least seven (7) Working Days before the designated delivery date within the agreed delivery period.

### 3.3. Delays in receipt of the Goods

If the Purchaser fails to issue executable shipping orders for the delivery period agreed in the Contract, Olenex shall be entitled, at its own choice: (i) to charge additional cost to compensate for the delay; and/or (ii) to postpone delivery by the same number of Working Days as the Purchaser was in arrears in addition to a reasonable period for making appropriate arrangements.

### 3.4. Tendering

Notwithstanding provisions of Clause 3.3., Olenex shall be entitled to give notice to the Purchaser requiring collecting the Goods (the "**Tender Notice**") at any time under consideration of the delivery period agreed in the Contract. The Tender Notice shall be given a least five (5) Working Days before the planned shipment date.



### 3.5. Grace Period

If the Purchaser fails to issue executable shipping order within the period defined in the Tender Notice, Olenex shall be entitled after the expiry of the Grace Period of five (5) Working Days without further notice:

- a) to demand specific performance and claim damages for the delay in performance; or
- b) to rescind the Contract or the part not yet performed and claim damages; or
- c) to store the Goods at the risk and expense of the Purchaser on Olenex's premises or on the premises of a third party.

### 3.6. Assessment of damages

If Olenex claims damages, it may effect assessment of such damage, inter alia, by means of sale or price determination performed by a third party (e.g. broker) which shall be binding upon both parties except obvious error. The reference date for price determination shall be the first Working Day following the expiry of the Grace Period.

### 3.7. Delays in delivery

Olenex shall make every effort to adhere to the agreed dates and times of delivery and the Purchaser shall have no right to rescind the Contract due to delay by Olenex. However, Olenex shall be released from adherence to contractual delivery dates and periods and shall not be liable to the Purchaser for any loss or damage directly or indirectly suffered by the Purchaser in connection with the delays in delivery, to the extent that and as long as such delivery is prevented, hindered or delayed due to circumstances or events occur beyond Olenex's reasonable control, including but not limiting to, either in the point of origin or point of delivery, which substantially impede performance ("**Substantial Impediment to Performance**"). All difficulties, irrespective of their nature, the sphere and segment of the supply chain in which they occur, such as force majeure and acts of God (e.g. fire, floods and low water, ice, delay in and/or loss of harvest, etc.), export and import restrictions, problems in procuring commodities, disruptions of operations (e.g. breakdown of machinery, etc.), strikes or any similar actions, states of emergency, riots, accidents, loading and/or transportation difficulties are deemed to be Substantial Impediments to Performance.

### 3.8. Consequences of Substantial Impediment to Performance

In the event of a Substantial Impediment to Performance under Clause 3.7., Olenex is entitled to extend the agreed delivery period by the duration of such Substantial Impediment to Performance and the time required to make adjustments to production schedules as a consequence thereof by up to three (3) months ("**Extension Period**"). Olenex shall be entitled but not obliged to supply goods equivalent to those contractually agreed or to replace failed deliveries with third-party goods of equal value within the Extension Period. Olenex shall not be liable to the Purchaser for any loss or damage directly or indirectly suffered by the Purchaser in connection with non-delivery or delay in delivery within the contractual delivery dates and/or periods within the Extension Period, due to the Substantial Impediment to Performance. In case of non-delivery, after the expiry of the Extension Period, the Contract may be rescinded at the request of the either party.



## 4. LOADING AND PACKAGING

### 4.1. Loading of the Goods

The loading of the Goods shall be performed within the working hours specified by Olenex in accordance with operational requirements and, if necessary, also in several shifts. The loading of the vessels shall be effected in accordance with local regulations practice. All costs arising from delays in loading and discharge for which Olenex is not responsible, such as demurrage and transport costs shall be borne by the Purchaser. Notwithstanding any other provision herein, any demurrage costs borne by the Purchaser, which are due to Olenex's fault, shall be duly evidenced and all such documents presented to Olenex in a timely manner at its request.

Olenex will compensate only reasonable market level demurrage costs.

### 4.2. Assumption of risk

Risk to the Goods shall be transferred from Olenex to the Purchaser pursuant to the respective terms of delivery, as agreed in each Contract. Any liability of Olenex due to inappropriate packaging or loading shall cease once the Purchaser or a third party has accepted the Goods without objection.

### 4.3. Suitable means of transportation

Either Olenex or the Purchaser shall be responsible for the provision of suitable means of transport at the time of acceptance of the Goods as specified in the respective terms of delivery. The means of transport shall only be deemed to be suitable if it meets all statutory requirements and any other regulation at the time of loading, throughout the transit period and during unloading. Olenex is entitled to reject means of transport deemed to be unsuitable.



## 5. QUALITY, WEIGHT, SAMPLING

### 5.1. Permissible weight fluctuations

Olenex may fall below or exceed the contractually agreed quantity by 5% at its own choice.

### 5.2. No warranty of properties

The Goods delivered by Olenex shall be of merchantable quality and complying with the specifications provided by Olenex. Any warranty with respect to fitness for a particular purpose shall only be binding if has been expressly guaranteed in writing by Olenex.

For further details, please refer to the respective product specifications.

### 5.3. Weight

Olenex shall determine the quantity of Goods with binding effect for both parties applying methods commonly used by Olenex for such purposes, unless agreed by the parties otherwise. The weight thus determined by Olenex shall be binding for invoicing and payment between the parties. Upon prior consultation with Olenex, the Purchaser may, together with an Expert Surveyor, hired at his own expense, participate in the procedure for determining the quantity of Goods. For the purposes of these T&Cs, the “**Expert Surveyor**” shall mean a certified surveyor according to either Recognized Superintended Companies as per effective NOFOTA Trading Rules or FOSFA Member Superintendents.

### 5.4. Rules relating to sampling

Olenex supplying plant shall take representative samples during the loading process and retain them, based on the local legal and customary requirements. The Purchaser has the right to appoint a superintendent company (the “**Superintendent**”) to supervise the sampling at the place of shipment at the Purchaser’s expense. The Purchaser shall notify Olenex of the request for sampling in due time, at the latest at the moment of placing the shipping order. The appointed Superintendent shall be familiar with the specifics of the oils and fats industry (e.g. either FOSFA or NOFOTA recognized) and shall follow the rules and instructions of respective web site, being either FOSFA or NOFOTA. The Superintendent shall take samples based on the ISO method 5555 (edition valid on effective date of these GTC).

### 5.5. Conclusiveness of sampling

Samples jointly taken and sealed in the presence of a Superintendent shall be conclusive in determining the quality of the Goods. In all other cases, the sample taken at the Olenex supplying plant shall be conclusive. In case of any dispute in relation to the quality of Goods, laboratories accredited for the parameters, method of analysis and products in question (e.g. FOSFA or NOFOTA recognized laboratories) shall be used to determine the final quality of the Goods at the expense of the claimant.



## 6. NOTICE OF DEFECTS

### 6.1. Duty of inspection and notification

The recipient shall carefully inspect the Goods immediately prior to acceptance / acknowledgement of receipt thereof. In the event of a claim, Olenex shall immediately be notified in writing or by facsimile with a detailed statement of reasons. Unless specifically regulated in the Contract, the warranty period for defects, which could not be identified with careful inspection and/or hidden defects, expires three months after the Goods have been delivered.

### 6.2. Replacement delivery

Should the claim be justified and raised in due form within the given period, Olenex is entitled, at its own choice either:

- a) to take back the defective Goods and replace them with goods conforming to the Contract, or
- b) reduce the purchase price respectively.

### 6.3. Processing and reshipment

Before commencing processing, the Purchaser shall determine whether the delivered Goods are suitable for their intended purpose, particularly for subsequent processing purposes. Once the delivered Goods are treated or processed, mixed or combined with other materials, they shall be deemed to have been approved by the Purchaser as complying with the Contract. Any warranty claims shall be excluded thereafter. This shall also apply with respect to reshipment of the Goods from the original place of delivery.





## 7. LIABILITY

### 7.1. Limitation of liability

Olenex's liability is limited to direct losses only. Olenex's liability for loss or damage caused by delay, is limited to a maximum of 5% of the purchase price agreed with Olenex.

### 7.2. Consequential loss or damage

Without prejudice to any other provisions of these T&CS, Olenex shall not be liable to the Purchaser under any Contract concluded under these T&CS for any loss of income, loss of actual or anticipated profits, loss of business, goodwill or reputation or any other type of indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or not, and whether caused by breach of contract, tort, indemnity or otherwise.

### 7.3. Limitation of time

All claims for damages against Olenex shall lapse no later than one year after the Goods have been delivered to the Purchaser; in the event of liability in tort, from the date of knowledge or grossly negligent lack thereof with regard to the circumstances supporting the claim and the identity of the person liable for damages. Any shorter statutory limitations periods shall take precedence.

### 7.4. Set-off by Olenex

The Purchaser agrees that Olenex may apply by way of set-off an amount equal to any monies or other liability owing from time to time by the Purchaser or any member of the Purchaser's group to Olenex against any monies or other liability owing by Olenex to the Purchaser.



## 8. PRICES AND TERMS OF PAYMENT

### 8.1. Increase in prices

Olenex is entitled to increase the price retroactively to reflect additional prime costs such as higher levies and energy costs or insurance premiums as well as hardship allowances (e.g. in the event of flood/low water or ice).

### 8.2. Taxes

All agreed prices shall be exclusive of any tax, i.e. the value added tax as well as any other applicable taxes and duties shall be paid by the Purchaser in addition to the agreed prices.

### 8.3. New obligations

Should any further-reaching or new obligation of any kind, affecting the terms of the contract, be imposed on Olenex by sovereign or official regulations after conclusion of the individual Contract, their consequences and additional costs shall form part of the Contract and shall be assumed by the Purchaser vis-à-vis Olenex. Should any levy, tax or other charge be imposed by the Swiss Government, the United Kingdom Government and/or the European Commission affecting the goods covered by Contract concluded between the Purchaser and Olenex, or the raw materials relating thereto, any such levy, tax or charge including any amendment thereto shall be for the Purchaser's' account.

### 8.4. No discount

In the case of deliveries of the Goods subject to tax, levies or similar charges, the respective amount of tax or levy shall be paid net, i.e. without a discount being granted.

### 8.5. Cheques

Cheques shall only be accepted on account of performance and only if agreed in the Contract.

### 8.6. Due date

The Purchaser shall be deemed to be in default without a reminder if it fails to effect payment when due unless it proves promptly that it is not responsible for the delay in payment.

### 8.7. Default interest

Default interest may be charged at the rate of 12% p.a. Olenex may assert claims for further loss or damage.

### 8.8. Set-off, right of retention by the Purchaser

Retention of payment or set-off by the Purchaser shall be permissible only upon the agreement between the Parties or if the claim has been finally adjudicated by a court of law.

### 8.9. No authority to collect

Olenex's representatives or employees are not permitted to collect any payments without specific written authorization.



## 9. CUSTOMS, FOREIGN TRADE AND EXCISE DUTY

### 9.1. Import and end use.

In the event that the Purchaser intends to benefit from a favorable customs tariff treatment on account of the end-use of the Goods (for example, use as heating fuel or for technical or industrial purposes) the Purchaser shall, without prejudice to its other obligations under this Clause 9.1, inform Olenex of such fact in writing and in due time. In such cases, the Purchaser hereby declares to take over full responsibility that the Goods are assigned to their prescribed end-use.

This responsibility includes full liability for any customs debts that may arise if the Goods are not assigned to their prescribed end-use, the prescribed end-use cannot be evidenced and/or is doubtful in the assessment of the competent customs authorities.

The Purchaser hereby declares to be the holder of all customs authorizations required for the use of the end-use procedure and/or, as may be the case, to fully cooperate with the 'Transfer of Rights and Obligations' (also referred to as 'TORO') in accordance with Article 218 of the Union Customs Code (Regulation (EU) No 952/2013 of 9 October 2013). This cooperation includes the provision of data and information upon request of Olenex and the facilitation of audits carried out by the competent customs authorities. The Purchaser shall, upon first request of Olenex, indemnify and hold harmless Olenex from and against any claim for customs duties or other payments arising from the Purchaser's violation of the obligations under this Clause.

### 9.2. Export regulations

Where the Purchaser himself or a third party designated by him exports the Goods from the customs territory of Switzerland or the European Community, the Purchaser shall also observe all applicable export regulations. The Purchaser shall, upon first request of Olenex, indemnify and hold harmless Olenex from and against any claim for customs duties or other payments arising from the Purchaser's violation of the obligations under this Clause 9.2.

### 9.3. Excise duty

The following shall apply to Goods which are subject to excise duty (where such Goods are intended to be used for taxable purposes, such as use as motor- or heating fuel): in advance of any delivery of the Goods, the Purchaser shall inform Olenex in writing (by letter, fax or email message) about the intended use of the Goods to be delivered. In addition, the Purchaser shall provide Olenex with all information and documents required by Olenex to observe the laws and regulations relating to excise duty. In the case of delivery of Goods subject to excise duty the Purchaser shall observe the applicable laws and regulations. The Purchaser shall, upon first request of Olenex, indemnify and hold harmless Olenex from and against any claim for excise duty or other payments arising from the Purchaser's violation of the obligations under this Clause 9.3.



## 10. RIGHTS OF OLENEX

### 10.1. Refusal of performance

Olenex may refuse performance, partly or in total, under the Contract, if:

- a) the Purchaser breaches any of its obligations under the Contract concluded under the present T&Cs or any other contract with an Olenex affiliated company, or
- b) doubts arise as to the Purchaser's solvency and willingness to pay, such determination shall be at Olenex's sole discretion, or
- c) the Purchaser's company is liquidated or transferred to a competitor of Olenex, or
- d) the credit limit of Olenex's credit insurance for the delivery of the Goods is exceeded.

In such cases, Olenex shall be entitled, at its own choice and without prejudice to any other rights it may have:

- a) to demand advance payment from the Purchaser subject to the deadline set out by Olenex or the provision of a bank guarantee agreed with Olenex, or
- b) to rescind the Contract or the part thereof not yet performed without any liability for damages towards the Purchaser, retaining itself the right to claim damages from the Purchaser. In any of the above named events, all sums due to Olenex by the Purchaser shall immediately become payable and the Purchaser will be obliged to return any Goods supplied by Olenex within 48 hours from receipt of written notice from Olenex. None of such actions shall in any way limit or prejudice any other rights Olenex may have, including for damages and interest.

### 10.2. Advance payment

Olenex is entitled at any time to demand payment in advance.

### 10.3. Assignment

The contracting Olenex company is entitled to assign contractual rights and obligations to another Olenex affiliated company.



## 11. RETENTION OF TITLE

### 11.1. Retention of title

All Goods delivered by Olenex to the Purchaser shall remain the property of Olenex until all payment obligations of the Purchaser before Olenex under the respective Contracts have been met ("Goods Under Retention of Title").

### 11.2. Ownership of processed Goods

Retention of title under Clause 11.1 shall continue to apply where the "Goods Under Retention of Title" undergo treatment or processing. In the event that the "Goods Under Retention of Title" are processed, combined and mixed with other materials by the Purchaser, Olenex shall acquire co-ownership of the new product in the ratio of the invoice value of the Goods Under Retention of Title to that of the other materials used. If Olenex's ownership ceases as a result of combining or mixing, the Purchaser hereby assigns title to the new products or materials to the extent of the invoice value of the "Goods Under Retention of Title" and shall store these on Olenex's behalf free of charge. The Goods subsequently co-owned by Olenex shall be deemed to be "Goods Under Retention of Title" pursuant to Clause 11.1. above.

### 11.3. Re-sale by the Purchaser

The Purchaser may only re-sell, process or mix the "Goods Under Retention of Title" with other materials in the ordinary course of its business and if it is not in default vis-à-vis Olenex. Pledges and transfer of ownership as security shall not be permitted. If payment of the purchase price by the customer is deferred, the Purchaser shall retain title to the "Goods Under Retention of Title" vis-à-vis its customer on the same terms and conditions applied by Olenex to retain title of the Goods.

### 11.4. Assignment and collection of claims

In the event of re-sale of the "Goods Under Retention of Title" to any third parties, the Purchaser hereby assigns to Olenex claims for amounts due to the Purchaser from such re-sale in proportion to Olenex's co-ownership rights. The same applies to any other claims superseding the "Goods Under Retention of Title" or otherwise arising with respect to these, such as insurance claims or tort claims in the event of loss or destruction.

### 11.5. Duty of notification

In the event of seizure of the "Goods Under Retention of Title" by any third party, in particular by attachment, the Purchaser shall immediately disclose to such third party Olenex's ownership of the Goods and notify Olenex thereof accordingly to enable Olenex to assert its ownership rights.

To the extent that the third party is unable to reimburse Olenex for the legal costs incurred in this connection, the Purchaser shall be liable for payment of such costs.



## 11.6. Event of realization

Should Olenex rescind the Contract due to a breach by the Purchaser according to Clause 10.1. of these T&Cs, Olenex has the right to demand from the Purchaser the return of “Goods Under the Retention of Title”.

## 11.7. Release

If requested, Olenex shall release the “Goods Under Retention of Title” and any items or claims superseding them at its discretion to the extent that their value exceeds the amount of secured claims by more than 50%.



## 12. COMPLIANCE PROVISIONS

### 12.1. Anti-corruption clause

The Purchaser warrants and represents to Olenex that the Purchaser, and all of its officers, directors, employees, agents, sub-contractors and other representatives acting on behalf of the Purchaser shall comply with all applicable anti-bribery and anti-corruption laws, statutes, directives and/or regulations issued by any government authority having jurisdiction over the territory in which Olenex and Purchaser are registered, the Goods are originated, or where any part of the services will be performed, including but not limited to the U.S. Foreign Corrupt Practices Act and UK Bribery Act. Any offence of the said regulations constitute a substantial breach of these T&Ss and any Contract.

### 12.2. Sanctions and Anti-Boycott Clause

The Purchaser agrees and undertakes to Olenex that the Goods will not be resold to, disposed of by, or transported on a vessel, or by a carrier, owned, flagged, chartered, managed or controlled by, directly or indirectly to, any country, person or entity, or for the purpose of any commercial activity, which would cause Olenex or a person subject to the laws of the U.S., E.U. (or its respective Member States), U.N., or Switzerland, to be in violation of applicable economic sanctions laws and/or export or re-export controls, and/or Anti-Boycott laws or regulations of the U.S.



## 13. FINAL PROVISIONS

### 13.1. Applicable law

These T&Cs and respective Contracts shall be governed by Swiss substantive law. The applicability of the UN Convention on the International Sale of Goods is excluded.

### 13.2. Place of jurisdiction

Any disputes arising from or in connection with contracts to which the T&Cs apply shall exclusively be settled in the courts of Zurich, Switzerland. Olenex may also bring proceedings against the Purchaser before the competent court having jurisdiction at the Purchaser's domicile.

### 13.3. Severability

If at any time any provision of the T&Cs is or becomes invalid this shall not affect the validity or enforceability of the remaining provisions. In this case, the provision in question shall be replaced with a provision with a similar economic effect to that intended by the parties.

### 13.4. Written form

No variation of the T&Cs including this clause regarding written form shall be effective unless made in writing.

