



## ORGANO USA, INC.

### GENERAL TERMS AND CONDITIONS OF SALE

In this GENERAL TERMS AND CONDITIONS OF SALE, "Products" means those items described in Organo's quotation or order acknowledgement; "Organo" means ORGANO USA, INC. at 23040 N. 11<sup>th</sup> Avenue Ste 107, Phoenix AZ 85027 USA, who sells Products to Buyer; and "Buyer" means the firm, company or person by whom Products are to be purchased and all permitted assignees thereof. Organo agrees to sell and Buyer agrees to purchase Products from time to time on the terms, conditions and provisions set forth herein, ALL OF WHICH BUYER HAS READ AND UNDERSTANDS AND TO WHICH IT AGREES.

1. **Quotation; Order Acceptance; Pricing.** Organo's quotations are expressly made conditional on Buyer's assent to the terms set forth herein which represent the sole and exclusive terms and conditions upon which Organo offers to sell Products to Buyer. Organo may, at its discretion, withdraw its quotation of Products at any time, and all purchase orders issued by Buyer, whether they are preceded by Organo's quotation or not, are subject to Organo's acceptance. Pricing for Products will be as stated on Organo's order acknowledgement and/or invoice.

2. **Purchase Order.** All purchases and sales between Organo and Buyer will be initiated by Buyer's issuance of purchase order, and may be placed by Organo-approved electronic data transmission form or by other means as approved in writing by Organo. Purchase order will include part number(s), quantity, requested delivery date(s), shipping address, shipping instructions, prices, payment terms and billing address of Buyer. Buyer shall not have the right to cancel any purchase order in whole or in part once Buyer issues it to Organo. Organo will accept or reject in writing Buyer's purchase order within five (5) Organo's business days of receipt of such purchase order from Buyer.

3. **Delivery; Title and Risk of Loss.** Products will be delivered Ex Works Organo's designated facility or premises (INCOTERMS 2020), unless otherwise agreed upon by Organo and Buyer. Title to each shipment of Products and risk of loss thereon will pass to Buyer upon Organo's or its agent's tender of delivery of Products to common carrier or licensed trucker at Organo's designated delivery point. Organo retains, and Buyer hereby grants, a security interest (or charge, lien, or similar right under applicable law) in Products and proceeds thereof until Buyer has made payment in full for Products. Buyer will, upon request by Organo, provide all cooperation required by Organo to perfect such security interest. Organo reserves the right to repossess Products if Buyer fails to make full payment for Products.

4. **Delay or Failure to Deliver.** In the event that a specific delivery date is designated by Buyer and agreed by Organo, Organo will use commercially reasonable efforts to meet such delivery date, but will have no liability if Organo is unable to do despite such commercially reasonable efforts.

5. **Force Majeure.** Organo will not be in default or liable, directly or indirectly, because of Organo's delay or failure to deliver Products or perform arising or resulting in whole or in part from any event, occurrence or cause beyond the reasonable control of Organo, including but not limited to an act of God, actions by governmental agency or authorities (including compliance by Organo with any direction, order or request of such agency or authorities), fire, flood, windstorm, earthquake, perils of the sea, tsunami, drought, explosion, natural disasters, war, riot, sabotage, accident, facility breakdown, embargo, epidemic, pandemic, labor problems (including lockouts, strikes and slowdowns), inability to obtain or delay in obtaining power, materials, other resources, labor, equipment or transportation or court injunction or order—each case where such event, occurrence or cause directly or indirectly interferes with or renders substantially more burdensome, Organo's production, delivery, or performance; provided that when notice of such delay (including the anticipated duration of delay) will be given by Organo to Buyer as soon as possible after event or occurrence.

6. **Packing.** All Products to be delivered will be suitably packed in Organo's standard containers in accordance with Organo's standard practices, marked for shipment to Buyer's address specified in the purchase order.

7. **Inspection and Acceptance.** Buyer or its agent shall inspect or test all Products promptly upon receipt of them. Buyer waives any right to assert any claim against Organo arising from any non-conformity of the quality, quantity, weight, and condition of Products delivered to Buyer unless Organo is advised of the non-conformity in writing within five (5) Organo's business days after receipt of Products by Buyer or its agent.

8. **Taxes and Increased Costs.** All taxes and duties to be imposed on Buyer for any payment made by Buyer to Organo according to the relevant laws shall be borne by Buyer. The amount payable by Buyer to Organo described in



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the relevant invoice is net amount that Organo will receive after payment by Buyer of taxes and/or any other payment required by relevant laws. In the event that Organo's cost of performance is increased after the date of Organo's quotation or this Agreement due to events which are beyond the reasonable control of Organo, or which are otherwise unavoidable, Buyer agrees to compensate Organo for such increased costs. Buyer shall bear the burden of any existing, new, or increased tax, public charge, freight, tariff or duty which may, after the date of Organo's quotation or this Agreement, be levied on or imposed upon this transaction contemplated hereby.

**9. Payment Terms.** Organo will invoice Buyer upon or after the delivery date of Products. Unless specified otherwise in Organo's quotation or order acknowledgement, Buyer's payments for Products shall be due on or prior to Net thirty (30) days from the date of bill of lading. If payment is not made in accordance with the applicable payment terms, or if Buyer's credit standing has been impaired at any time, Organo may withhold delivery of Products until satisfactory cash or credit arrangements have been made, and may demand in writing that Buyer provides adequate assurance of its ability to make payments under such terms. In addition, Organo shall have the right to cease any further delivery, should Buyer voluntarily declare or place itself into, or is involuntarily placed into, bankruptcy or other similar insolvency proceedings. Buyer shall pay all costs (including reasonable attorneys' fees) incurred by Organo to collect amounts due under this Agreement.

**10. Default Interest.** Buyer shall bear interest at the rate of one percent (1%) per month, up to the maximum rate of interest permitted by applicable law for any delinquent payment.

**11. Limited Warranty.** Organo hereby warrants to Buyer that the title to Products will be free of any encumbrances, and that, at the time of shipment to Buyer, such Products will conform to the specifications set forth in the then in effect Organo's or manufacturer's Certificate of Analysis ("COA") or the other written specifications provided by Organo, as applicable (collectively, the "Specifications"), subject to the standard manufacturing variances. In the event of a breach of warranty by Organo, Organo's responsibility, and the exclusive remedy of Buyer is, at Organo's option and subject to the terms hereof, to repair or replace the non-conforming Products with conforming Products, or to refund/credit Buyer's account in the amount of the purchase price of the return of non-conforming Products that are returned or offered to return by Buyer to Organo, *provided that* (a) Buyer shall promptly notify Organo of such non-conformance together with detailed explanation of any alleged non-conformance within seven (7) days after receipt of the Products, and (b) the non-conforming Products must be returned to Organo in the condition in which they were received except for any sample taken by Buyer to perform testing (if any) within fourteen (14) days after notifying Organo of such non-conformance. Any return must be pursuant to a Return Material Authorization issued by Organo (if any). The returned Products must be packed and shipped in the original container and packaging and in accordance with Organo's instructions to ensure the safety and resale value of the Products. If the original container and packaging are unavailable, Buyer shall provide packaging sufficient to prevent any damage during its shipment by obtaining approval from Organo. Failure to comply with these provisions shall invalidate any claim for breach of warranty. Upon receipt of returned Products, Organo will examine them and determine to its satisfaction that such Products are indeed defective. If Organo determines that such the Products are defective, Organo shall, at its option and its cost, replace or modify such Products, or refund the amount paid for the Products together with the return shipment cost. The images of Products appearing in the websites, catalogues, brochures or samples submitted by Organo are intended for purpose of illustration and do not constitute any warranty of quality or condition. Organo assumes no responsibility for adequacy or performance of engineering, design or specifications furnished by Buyer. Organo shall not be liable for any defects or any other malfunctions of Products caused by; (1) any misuse, neglect, storage, accident, handling or installation, repair, alteration and testing such Products not specified in Specifications, (2) any combination of such Products with any other item or product not specified in the Specifications, (3) any modification or degradation of such Products performed by any third party other than Organo, or (4) Organo's adherence to request, instruction or specification by Buyer.

**12. Disclaimer of Further Warranties.**

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. ORGANO MAKES NO OTHER WARRANTIES WITH RESPECT TO PRODUCTS, WHETHER EXPRESS OR IMPLIED, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES THAT WOULD OTHERWISE ARISE FROM COURSE OF DEALING OR PERFORMANCE. BUYER REPRESENTS THAT IT HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION OR WARRANTY OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS SECTION. IN THE EVENT THAT PRODUCTS FAIL TO CONFORM TO THE FOREGOING WARRANTY, BUYER'S SOLE AND EXCLUSIVE REMEDY IS, AT ORGANO'S OPTION, THE REPAIR OR REPLACEMENT OF PRODUCTS OR REFUND OF THE PURCHASE



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PRICE. IF ANY IMPLIED WARRANTIES APPLY AS A MATTER OF LAW, THEY ARE LIMITED IN DURATION TO THE LENGTH OF THE WARRANTY STATED ABOVE.

**13. IP Indemnity.** In the event that a third party brings a lawsuit or claim against Buyer due to the infringement or alleged infringement of any Products in its original state of (i) a U.S. issued patent, or (ii) a trademark, copyright or other intellectual rights ("IP Infringement Claim"), Buyer shall give prompt notice of the same to Organo, and Organo will defend Buyer against any and all losses, liabilities, damages or the legal and related costs and expenses of such defense finally awarded by court of competent jurisdiction, including without limitation to reasonable attorney's fees, resulting from a claim or suit against Buyer based upon an actual infringement of a third party's intellectual property rights arising from IP Infringement Claim, *provided that* Buyer shall give Organo full and complete authority, information and assistance (at Organo's expense) for such defense and no settlement or compromise shall be made without Organo's prior written consent. Concurrent with defending the IP Infringement Claim and/or in the event such Products are held by competent court to constitute infringement, Organo shall have, at its option in its sole discretion, the right to do any one or more of the followings: (a) retain the right for Buyer to continue using Products; (b) modify such Products so that it becomes non-infringing; or (c) remove it, grant Buyer a credit for the purchase price thereof, and cease further supply of like Products. Organo's obligations will not extend to lawsuits or claims of infringement arising from (1) any item or product produced from such Products, (2) any combination of such Products with any other item or product not specified in the Specifications, (3) any use or application of such Products not specified in the Specifications, (4) any modification or degradation of such Products performed by any third party other than Organo, or (5) any product made in accordance with Buyer's specifications or instructions (any circumstance listed in clauses (1) - (5), an "Exception"). THE FOREGOING REMEDY IS EXCLUSIVE AND CONSTITUTES ORGANO'S SOLE OBLIGATION FOR ANY IP INFRINGEMENT CLAIM. Buyer shall defend, indemnify and hold Organo harmless in any lawsuit or IP Infringement Claim arising from an Exception, and Buyer shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such lawsuit or claim including without limitation to reasonable attorney's fees, *provided that* Organo will give Buyer full and complete authority, information and assistance (at Buyer's expense) for such defense and no settlement or compromise shall be made without Buyer's prior written consent.

**14. Commitments.** Buyer warrants that it has used its own independent skill and expertise in connection with the selection and use of Products, and use or application of Products is at the sole discretion of Buyer without any liability or obligation on the part of Organo. Further, Buyer acknowledges that it is responsible for the safe selection, unloading, handling, storage, use, sale, export and disposal of Products. Buyer warrants that it will (i) familiarize itself with Products information supplied by Organo at any time, including any Material Safety Data Sheets, if any, and (ii) follow safe handling, use, selling, storage, export, transportation and disposal practices and ensure that all employees, contractors, agents and customers of Buyer follow these practices, including such special practices as Buyer's use of Products may require. Buyer further (a) shall take appropriate actions to avoid spills or other dangers to persons, property or the environment, (b) shall indemnify and hold Organo harmless against any claim, loss, liability and expense (including reasonable attorneys' fees) on account of any damage to property or injury or death of persons (including Buyer's employees and including any product liability) arising out of Buyer's unloading, handling, storage, use, sale or disposal of Products or the failure of Buyer to comply with any of its obligations set forth in this Section, (c) shall comply with all applicable laws, rules and regulations, whether of the United States, any state thereof or any foreign country concerning the transportation, storage, use, sale, export and disposal of Products, including any export control laws, and (d) agrees that technical information provided by Organo in regards to Products (whether verbal, written or by product evaluation) are without warranty or representation.

**15. LIMITATION OF LIABILITY.** TO THE EXTENT ORGANO IS HELD LEGALLY LIABLE TO BUYER UNDER THIS AGREEMENT, ORGANO'S MAXIMUM LIABILITY IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED OF PRODUCTS AT ISSUE. SUBJECT TO THE PRECEDING SENTENCE, IN NO EVENT WILL ORGANO OR ITS AFFILIATES, CONTRACTORS AND SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING DOWNTIME COSTS AND LOST PROFITS OR REVENUES, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF WHETHER OR NOT ORGANO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER THE REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE ALLOCATION OF RISK IN THESE TERMS AND CONDITIONS OF SALE IS MATERIAL TO THIS TRANSACTION, THE LIMITATIONS



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OF LIABILITY IN THIS SECTION WILL BE GIVEN FULL EFFECT, AND BUYER ACKNOWLEDGES AND AGREES THAT ORGANO WOULD NOT ENTER INTO THIS TRANSACTION WITHOUT THESE LIMITATIONS OF LIABILITY.

**16. Export Controls.** Products sold under this Agreement may be subject to US Export Control Laws, including Exporting Administration Act and its associated regulations and export or import regulations in other countries. Buyer agrees to comply strictly with such export control laws and acknowledges that it has responsibility to obtain license to export or reexport Products or any parts thereof. Products and its parts thereof shall not be exported or reexported into, or to a national resident of any country to which the US has embargoed goods or to anyone on the US Treasury Department List of Specially Designated Nationals, the US Commerce Department List of Denied Parties, Unverified List, Entity List or the US State Department Debarred List without the explicit approval of US Export Licensing Authorities.

**17. Protection of Confidential Information.** Buyer agrees and acknowledges as follows: (a) Confidential Information, and any and all patents, copyrights and other IP rights related to Products, are the sole property of Organo and/or its affiliates; (b) Buyer's use of the Confidential Information shall at all times be only for Organo's benefit; (c) at all times, Buyer agrees to keep in confidence all Confidential Information, and not to use nor to disclose any Confidential Information or anything relating to it without Organo's prior written consent; (d) Buyer agrees to return all Confidential Information and "Physical Property" (samples, documents, equipment, and any and all other physical property, whether or not pertaining to Confidential Information) to Organo immediately upon Organo's request. For the purpose of this Agreement, "Confidential Information" means any and all information designated and disclosed by Organo to Buyer in tangible and/or in intangible form, and is to be construed broadly and includes, but is not limited to, all of the following relating to Organo or Products: business methods, data and other recorded information, customer lists and information, pricing, designs, samples, drawings, ideas and proposals, inventions, know-how, materials and documents, products, programs, sources of supply, specifications, techniques, contacts and relationships, trade secrets, and the like, all whether in preliminary or final form and in and on any media whatsoever, that are created, conceived, reduced to practice, developed, discovered, invented or made, whether before or during the term of this Agreement. Confidential Information does not include: (a) what is already public at the time of disclosure to Buyer; (b) what is later publicly made known without any unlawful acts, omissions and conduct of Buyer or third-parties; (c) what is provably and demonstrably already known to Buyer prior to any disclosure of Confidential Information; or (d) what has been developed by Buyer without reference to or use of Organo's Confidential Information. For purpose of the foregoing, Confidential Information shall not be deemed to be information of written record in Buyer's files or publicly known merely because it is embraced by more general information that is already of written record in Buyer's files or publicly known, nor shall Confidential Information containing assembled or combined elements be deemed to be already of written record in Buyer's files or publicly known merely because information containing individual items of such elements are of written record in Buyer's files or publicly known. Buyer acknowledges that disclosure or use of Confidential Information in breach of these terms may cause irreparable harm to Organo, monetary damages may be an inadequate remedy for such breach, and Organo will have the right, in addition to all other rights and remedies, to seek injunctive relief for any breach of these terms. In the event that Organo and Buyer enter into a non-disclosure agreement, the terms of that non-disclosure agreement shall supplement, be in addition to these terms.

**18. Notices.** All notices must be in writing and mailed or delivered to the appropriate address set forth in this Agreement or otherwise as designated by Organo and Buyer in writing.

**19. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, USA without regard to principles of its conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods. Whenever a term defined by the UCC as adopted in the State of New York is used in this Agreement, the definition in such UCC shall control. In the event that Buyer fails to perform any of its obligations, Organo shall be entitled to all legal and equitable remedies including those specified herein and under the UCC.

**20. Arbitration.** Any dispute, difference, controversy or claim arising out of or relating to the sale of Products hereunder or a breach thereof, which cannot be resolved over a period of at least ninety (90) days shall be resolved by arbitration conducted in the English language in New York, USA and administered by American Arbitration Association ("AAA"). There shall be three (3) arbitrators appointed by AAA. The prevailing party in any such proceeding shall be entitled to an award of its reasonable attorneys' fees and other costs, including the fees and expenses of the arbitrator and AAA. The arbitrator's decision shall be final and binding upon Organo and Buyer, and the award made by the arbitrators may



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be filed in any court of competent jurisdiction and execution issued thereof. Nothing in this Section shall limit the right of Organo to exercise at any time self-help remedies under the UCC as adopted in New York.

**21. Assignability.** Neither party may assign this Agreement without the consent of the other, which consent shall not be unreasonably withheld.

**22. Entire Agreement/Amendment.** The terms and conditions set forth herein constitute the entire agreement between Organo and Buyer, relating to the sale of Products, acceptance is limited to the terms of these terms and conditions and no additional or different terms proposed by Buyer shall become part of the agreement between Organo and Buyer unless Organo expressly agrees in writing. This Agreement prevails over any and all inconsistent terms proposed by Buyer in any purchase order issued by Buyer or otherwise. Acceptance of Buyer's purchase order by Organo is expressly made conditional on Buyer's assent to this TERMS AND CONDITIONS OF SALE, evidenced either by Buyer's written acknowledgment or by conduct that recognizes the existence of an agreement with respect to Products described in Organo's order acknowledgement or invoice.

**23. Separability/Waivers.** The provisions of this Agreement shall be deemed to be separable; if any part thereof is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect. Organo or Buyer's waiver of any breach or failure to enforce any of the provisions contained herein shall not be deemed to affect, limit or waive such party's right thereafter to require compliance with the provisions contained herein.

**24. Modification.** This Agreement may be changed only by a writing signed by an authorized representative of Organo stating that it is modifying this Agreement.