

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

In re:)
) Chapter 15
NILEX USA INC.¹) Case No. 22-14719 KHT
)
Debtor in Foreign Proceeding.)

**ORDER GRANTING AND AUTHORIZING PROPOSAL TRUSTEE’S, AS THE
AUTHORIZED FOREIGN REPRESENTATIVE OF NILEX USA, INC., MOTION,
PURSUANT TO SECTIONS 105(a), 363, 1501, 1520 AND 1521 OF THE BANKRUPTCY
CODE AND RULES 2002, 6004, AND 9013, FOR ENTRY OF AN ORDER APPROVING
SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS AND
GRANTING RELATED RELIEF**

The above-captioned matter, having come before the Court on the Proposal Trustee’s, as the Authorized Foreign Representative of Nilex USA, Inc., Motion Pursuant to sections 105(a), 363, 1501, 1520 and 1521 of the Bankruptcy Code and Rules 2002, 6004 and 9013, For Entry of An Order Approving and Authorizing Sale of U.S. Assets Free and Clear of Liens, Claims and Interest and Granting Related Relief (Docket No. 15) (the “**U.S. Sale Motion**”)² filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as Proposal Trustee (the “**Proposal Trustee**”) and authorized foreign representative (the “**Foreign Representative**”) of Nilex USA, Inc. (“**Nilex USA**”) (together, with Nilex Inc. the “**Nilex Debtors**”) in the proceeding (the “**Canadian Nilex USA Proceeding**”³), commenced by the filing of a notice of intention to make a proposal (an “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) on November 24, 2022 and currently pending in the Court of King’s Bench of Alberta in Canada (the “**Alberta Court**”); and this Court, having determined that the relief requested in the

¹ The last four digits of the Debtor’s employer identification number are: 5644.

² Capitalized terms not defined in this Sale Order shall have the meanings ascribed to them in the APA (defined below).

³ The Canadian Nilex USA Proceeding, together with similar proceedings commenced by Nilex Inc. on October 27, 2022, are collectively referred to herein as the “**Canadian Proceedings.**”

U.S. Sale Motion is in the best interests of Nilex USA, its estate, its creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS THAT:

JURISDICTION, FINAL ORDER, AND STATUTORY BASES

A. On January 10, 2022, this Court entered its Order Granting Recognition as a Foreign Main Proceeding and Related Relief (Docket No. 34) (the “**Recognition Order**”).

B. This Court has jurisdiction to hear and determine the U.S. Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (P). Venue is proper in this District and in this Court pursuant to 28 U.S.C. § 1410.

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief requested in the U.S. Sale Motion are Bankruptcy Code sections 105(a), 363(b), (f), and (m) and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f), and (h), 9007, and 9014.

NOTICE

E. Actual written notice of the U.S. Sale Motion, the sale of the U.S. Assets,⁴ and a reasonable opportunity to object or be heard with respect to the U.S. Sale Motion and the relief

⁴ As described in the Sale Documents and APA.

requested therein has been afforded to all known creditors and interested entities and parties, and any party requesting notice, all pursuant to Rule 2002(a) of the Rules of Bankruptcy Procedure and Rule 9013 of the Local Rules of Procedure. Notice of the U.S. Sale Motion and the hearing thereon was timely, proper, and reasonably calculated to provide all creditors, parties in interest and all other entities noticed with timely and proper notice of the U.S. Sale Motion and the hearing thereon.

F. As evidenced by the certificates of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the U.S. Sale Motion has been provided in accordance with Bankruptcy Code sections 102(1), 363 and Bankruptcy Rules 2002, 6004 and 9014, along with Local Bankruptcy Rule 9013. The notice described above was good, sufficient, proper and appropriate under the circumstances, and no other or further notice of the U.S. Sale Motion is required.

G. The Nilex Debtors conducted a sale process (the “**Sale Process**”) in accordance with the Application, Proposal Order, Second Application, Ancillary Order and the Approval and Vesting Order. The Purchaser (as defined below) has executed the Asset Purchase Agreement (together with its schedules and attachments, the “**APA**”) and has submitted the same and other agreements to the Nilex Debtors (the Application, Proposal Order, Second Application, Ancillary Order and the Approval and Vesting Order and appended exhibits thereto shall all be referred to as the “**Sale Documents**”). The Sale Process set forth in the Sale Documents afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the U.S. Assets. The Sale Process was duly noticed in the Nilex Canada Canadian Proceedings and was conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to interested parties to make a higher and better offer for the U.S. Assets.

VALIDITY OF TRANSFER

H. Nilex USA has full corporate power and authority to execute and deliver all documents contemplated in connection with the sale of the U.S. Assets, and no further consents or approvals are required for Nilex USA to consummate the transactions contemplated by the U.S. Sale Motion and Nilex USA has the corporate authority to do so. In addition, on November 28, 2022, the Alberta Court entered its Approval and Vesting Order approving Nilex USA's sale of its U.S. Assets.

I. The transfer of each of the U.S. Assets to the Purchaser (as defined below) will be, as of the closing date, legal, valid, and effective transfers of such assets, and each such transfer vests or will vest the Purchaser, with all right, title, and interest of Nilex USA to the U.S. Assets free and clear of all liens, claims, and interests accruing, arising, or relating thereto any time prior to the closing date as further described herein.

J. Nilex USA is the sole and lawful owner of the U.S. Assets. Subject to section 363(f) of the Bankruptcy Code, the transfer of each of the U.S. Assets to the Purchaser will be, as of the U.S. Closing, a legal, valid, and effective transfer of the U.S. Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of Nilex USA in the U.S. Assets free and clear of (i) all claims, liens and encumbrances relating to, accruing, or arising any time prior to the U.S. Closing Date, including but not limited to all Claims, Encumbrances and Excluded Liabilities⁵ and (ii) all debts arising under, relating to, or in connection with any act of the Nilex Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to

⁵ All as defined under the APA.

or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise, including, without limitation, rights with respect to Claims and Encumbrances (a) that purport to give to any party a right of setoff, offset, recoupment or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of Nilex USA or the Purchaser's interests in the U.S. Assets, or any similar rights, or (b) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income or other exercise of any attributes of ownership (all of the above collectively referred to herein as the (the "Nilex Claims")), with the exception of Assumed Liabilities that are expressly assumed by Purchaser under the APA, or Permitted Encumbrances that are expressly allowed under the APA.

No Fraudulent Transfer or Merger

K. The consideration provided by the Purchaser pursuant to the APA (i) is fair and reasonable, (ii) is the highest or best offer for the U.S. Assets, and (iii) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. No other person or entity or group of entities has offered to purchase the U.S. Assets for greater overall value to Nilex USA's estate than the Purchaser. Approval of the APA and the consummation of the transactions contemplated thereby are in the best interests of Nilex USA, its estate, creditors, and other parties in interest.

L. The APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state,

territory, possession or the District of Columbia. Neither Nilex USA nor the Purchaser is entering into the transactions contemplated by the APA fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims.

M. The Purchaser is not a mere continuation of the Nilex Debtors or Nilex USA's estate and there is no continuity of enterprise between the Purchaser and the Nilex Debtors. The Purchaser is not holding itself out to the public as a continuation of the Nilex Debtors. The Purchaser is not a successor to the Nilex Debtors and the Sale does not amount to a consolidation, merger, or de facto merger of Purchaser and the Nilex Debtors.

GOOD FAITH OF PURCHASER

N. As set forth in the U.S. Sale Motion, Hanes Companies, Inc. (the "**Purchaser**") is not an "insider" of the Proposal Trustee or Nilex USA, as defined in Bankruptcy Code section 101(31) or applicable case law. The Sale Documents were negotiated, proposed, and entered into by Nilex USA and the Purchaser without collusion, in good faith, and from arms-length bargaining positions. Neither Nilex USA nor the Purchaser have engaged in any conduct that would cause or permit the Sale Documents to be avoided under section 363(n) of the Bankruptcy Code. The Purchaser has not acted in a collusive manner with any person and the US Purchase Price was not controlled by any agreement among the bidders.

O. The Foreign Representative has demonstrated compelling circumstances and good and sufficient business purpose and justification for the Sale.

P. The Purchaser is purchasing the U.S. Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). The Purchaser is, therefore, entitled to the full protections of section 363(m) and has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) all payments to be made by

Purchaser and other agreements or arrangements entered into by Purchaser in connection with the sale have been disclosed; (ii) Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction; (iii) no common identity of directors or controlling stockholders exists between Purchaser or Nilex USA; (iv) agreeing to subject its bid to the competitive bidding in the Sale Process in the Canadian Proceedings; (v) neither inducing nor causing the filing of the Canadian Proceedings; and (vi) the sale of the U.S. Assets was negotiated at arm's length and in good faith.

Q. The sale of the U.S. Assets represents a fair and reasonable offer to purchase the U.S. Assets under the circumstances of this chapter 15 case. The sale of the U.S. Assets is not a fraudulent transfer or bulk sale and the Purchase Price represents the fair and reasonably equivalent value of the U.S. Assets. No other entity or group of entities has offered to purchase the U.S. Assets for greater economic value to the Nilex USA estate than the Purchaser.

R. Approval of the U.S. Sale Motion and the Sale Documents and the consummation of the transactions contemplated thereby is in the best interests of Nilex USA, its creditors, its estate and all other parties-in-interest.

SATISFACTION OF SECTION 363(f)

S. The Purchaser would not have entered into the APA and would not consummate the transaction contemplated thereby if the sale of the U.S. Assets to the Purchaser was not free and clear of all liens, claims, and interests of any kind or nature whatsoever, including, but not limited to Nilex Claims, and, (i) any employment or labor agreements; (ii) mortgages, deeds of trust and security interests; (iii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Nilex Debtors; (iv) any other employee, worker's compensation, occupational disease, or

unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement, Income, Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, (h) the Consolidated Omnibus Budget Reconciliation Act of 1986, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, or (k) any other state or federal benefits or claims relating to any employment with the Nilex Debtors or any of its respective predecessors; (v) Environmental claims or liens arising from conditions first existing on or prior to the US Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, or similar state statute; (vi) any bulk sales or similar law; (vii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (viii) any theories of successor liability.

T. Nilex USA may sell the U.S. Assets free and clear of all liens, claims and interests, including but not limited to the Nilex Claims against Nilex USA, its estate, or any of the U.S. Assets because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Most notably, Canadian Imperial Bank of Commerce (“CIBC” or the “**Secured Lender**”), the Nilex Debtors’ primary secured creditor, has consented to the sale of the U.S. Assets, thereby satisfying Section 363(f)(2) of the Bankruptcy Code. Those other holders of liens, claims, and interests, including Nilex Claims against Nilex USA, if any, its estate, or any of the U.S. Assets who did not object, or who

withdrew their objections to the U.S. Sale Motion, are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such liens, claims and interests, including Nilex Claims who did object, if any, fall within one or more of the other subsections of section 363(f) and are adequately protected by having their liens, claims and interests, if any, in each instance against the Nilex USA, its estate, or any of the U.S. Assets, attach to the cash proceeds of the transactions ultimately attributable to the U.S. Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor had prior to the transactions, subject to any claims and defenses Nilex USA and its estate may possess with respect thereto.

U. The transfer of the U.S. Assets to the Purchaser free and clear of all liens, claims and interests, including the Nilex Claims, will not result in any undue burden or prejudice to any holders of any liens, claims and interests including the Nilex Claims, if any, as all such liens, claims and interests including the Nilex Claims of any kind or nature whatsoever shall attach, except as otherwise provided in this Order, to the net proceeds of the sale of the U.S. Assets received by Nilex USA in the order of their priority, with the same validity, force and effect which they now have against the U.S. Assets and subject to any claims and defenses other parties may possess with respect thereto. All persons having liens, claims and interests, including the Nilex Claims, of any kind or nature whatsoever against or Nilex USA or the U.S. Assets, shall be forever barred, estopped and permanently enjoined from pursuing or asserting such liens, claims and interests, including the Nilex Claims if any, against Purchaser, any of their U.S. Assets, property, successors or assigns, or the U.S. Assets.

COMPELLING CIRCUMSTANCES FOR IMMEDIATE SALE

V. To maximize the value of the U.S. Assets, it is essential that the closing of the Sale occur within the time constraints set forth by the Proposal Trustee, Sale Documents and the APA. Time is of the essence in consummating the transactions set forth herein.

W. Given all the circumstances of this chapter 15 case and the adequacy and fair value of the purchase price under the sale, the transactions constitute a reasonable exercise of Nilex USA's business judgment and should be approved.

X. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f) and 363(m), and all the applicable requirements of such sections, have been complied with in respect of the transactions.

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

GENERAL PROVISIONS

1. The relief requested in the U.S. Sale Motion is **GRANTED**. The transaction contemplated by the U.S. Sale Motion is approved as set forth in this Order. The Sale and Sale Documents and all other ancillary documents, and all the terms and conditions thereof, are hereby **APPROVED**.

2. All objections to the U.S. Sale Motion, if any, or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court or by stipulation filed with this Court or as otherwise provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits. Those parties who did not object or withdrew their objections to the U.S. Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

3. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, Nilex USA is authorized, directed and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the Sale Documents, (b) close the Sale as contemplated in the Sale Documents and this Order, and (c) execute and deliver, perform under, consummate, implement, and close the Sale, together with all additional instruments and documents, that may be reasonably necessary or desirable to implement the Sale and the transactions contemplated thereby, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Sale Documents and such other ancillary documents. Nilex USA is hereby authorized and directed to use its best efforts to take any and all actions necessary to consummate the Sale Documents, including any actions that otherwise would require further approval by shareholders, members, or its board of directors, as the case may be, without the need of obtaining such approvals. The automatic stay under Section 362 of the Bankruptcy Code is hereby modified to allow the US Closing to occur and to permit all acts in furtherance of the APA and its terms. The automatic stay imposed by section 362(a) of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Sale Order.

4. This Order shall be binding in all respects upon Nilex USA, the Proposal Trustee, the Nilex USA creditors, all holders of equity interests in Nilex USA, against or on all or any portion of the U.S. Assets, all holders of any claim(s), whether known or unknown, against Nilex USA, any holder of the Nilex Claims, any holders of liens, claims and interests against or on all or any portion of the U.S. Assets, including, but not limited to, the Secured Lender, all contract counterparties, the Purchaser and all successors and assigns of the Purchaser, and any trustees,

examiners, receiver, responsible officers, liquidating trusts, estate representatives, or similar entities for Nilex USA, if any, subsequently appointed in the Nilex USA's chapter 15 case or upon a conversion under the Bankruptcy Code of the Nilex USA case and shall not be subject to rejection or avoidance by Nilex USA, its estate, creditors or any trustee, liquidating trust, examiner or receiver. This Order and the Sale shall inure to the benefit of Nilex USA, its estate and creditors, the Purchaser, and their respective successors and assigns. For cause shown, this Order shall also survive dismissal of the above captioned bankruptcy case pursuant to 11 U.S.C. §349.

5. The Approval and Vesting Order entered in the Canadian Proceedings, a copy of which is attached to this Order as **Exhibit A**, is hereby recognized and given full force and effect in the United States.

TRANSFER OF PURCHASED ASSETS

6. Pursuant to Bankruptcy Code sections 105(a), 363(b) and 363(f), Nilex USA is directed to transfer the U.S. Assets on the U.S. Closing, and Purchaser is directed to pay the US Purchase Price to the Proposal Trustee on behalf of Nilex USA, all as further provided in the Sale Documents. The U.S. Assets shall be transferred to the Purchaser "as is, where is" with all faults in accordance with the Sale Documents upon and as of the U.S. Closing, and such transfer shall constitute a legal, valid, binding, and effective transfer of such U.S. Assets and, upon the receipt of the US Purchase Price, shall vest Purchaser with title to the U.S. Assets, which shall be free and clear of all liens, claims and interests, including but not limited to the Nilex Claims upon the U.S. Closing, the Purchaser shall take title to and possession of the U.S. Assets pursuant to the terms of the APA.

7. On U.S. Closing, this Sale Order shall be construed and shall constitute, for any and all purposes, a full and complete general assignment, conveyance and transfer of Nilex USA's interests in the U.S. Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale Documents.

8. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the U.S. Assets shall be free and clear of any and all liens, claims and interests, including, but not limited to, liens, claims and interests held by, maintained by, or otherwise in favor of the Secured Lender and any of the Nilex Claims. The Purchaser is not and shall not be liable as a successor under any theory of successor liability for liens, claims, and interests that encumber or relate to the U.S. Assets. All liens, claims and interests, including the Nilex Claims, shall attach solely to the proceeds of the Sale with the same validity, priority, force, and effect that they now have as against the Assets, and subject to any claims and defenses that Nilex USA and its estate may possess with respect thereto.

9. On the US Closing, the applicable Governmental Authorities⁶ in Canada and the Secured Creditor are hereby authorized, requested and directed to clear title to the U.S. Assets and authorized and directed to execute such documents and take all other actions as may be necessary to release liens, claims and interests on the U.S. Assets, if any, as such liens, claims and interests may have been recorded or may otherwise exist. All persons and entities that are in possession of some or all of the U.S. Assets after the U.S. Closing are directed to surrender possession of such U.S. Assets to the Purchaser or its assignee after the U.S. Closing pursuant to the terms of the Sale Documents.

⁶ "Governmental Authorities" are defined in the Approval and Vesting Order entered by the Alberta Court.

10. This Order shall be effective as a determination that, as of the U.S. Closing, all liens, claims and interests of any kind or nature whatsoever existing, including but not limited to the Nilex Claims as to the U.S. Assets prior to the U.S. Closing, have been unconditionally released, discharged and terminated, and the conveyances described herein have been effected with such liens, claims and interests to attach to the U.S. Purchase Price received by the Proposal Trustee at the closing in the same priority that existed as of the Petition Date.

11. If any entity (a “**Claim Holder**”) which has filed statements or other documents or agreements evidencing liens, claims and interests on or in all or any portion of the U.S. Assets shall have delivered to the Proposal Trustee prior to the U.S. Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Purchaser for the purpose of documenting the release of all liens, claims and interests, including the Nilex Claims that such Claim Holder has or may assert with respect to all or any portion of the U.S. Assets, then (i) the Proposal Trustee is authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Claim Holder with respect to the U.S. Assets, and (ii) Purchaser is authorized to file, register, or otherwise record a certified copy of this Order with the appropriate clerk(s) and/or recorder(s), which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims and interests, including the Nilex Claims in the U.S. Assets as of the U.S. Closing of any kind or nature whatsoever; provided, however, that any liens held by the Secured Lender shall be released and the authorization set forth herein shall apply to the release of such liens only upon the receipt by the Proposal Trustee of the U.S. Purchase Price.

12. Except as expressly permitted or otherwise specifically provided by the Sale Documents or this Order, all entities holding liens, claims and interests in all or any portion of the U.S. Assets, including but not limited to holder of Nilex Claims arising under or out of, in connection with, or in any way relating to Nilex USA, the U.S. Assets, the operation of the Nilex USA's business prior to the U.S. Closing, or the transfer of the U.S. Assets to Purchaser, are hereby forever prohibited and permanently enjoined from: (i) asserting such liens, claims and interests, including but not limited to the Nilex Claims against Purchaser, its successors or assigns, its property or the U.S. Assets; (ii) commencing or continuing in any manner any action or other proceeding against the Purchaser, its affiliates, its successors, assets or properties relating to such Nilex Claims; (iii) enforcing, attaching, collecting, or recovering in any manner, any judgment, award, decree, or order against the Purchaser, its affiliates, its successors, assets or properties relating to such Nilex Claims; (iv) creating, perfecting, or enforcing any of the Nilex Claims against the Purchaser, its affiliates, its successors, assets, or properties; (v) asserting any setoff, offset, right of subrogation, or recoupment of any kind against any obligation due the Purchaser, its affiliates or its successors relating to the Nilex Claims; or (vi) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof.

13. Except as otherwise provided expressly by the Sale Documents or expressly in this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, tort claimants, litigants, trade and other creditors, holding liens, claims or interests of any kind or nature whatsoever against or in either of the Nilex USA or the U.S. Assets (whether

legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), including but not limited to the Nilex Claims arising under or out of, in connection with, or in any way relating to Nilex USA, the U.S. Assets, or the operation of the U.S. Assets prior to the U.S. Closing or the Sale, are forever barred, estopped and permanently enjoined from asserting, other than in this Court which shall retain exclusive jurisdiction to hear such controversies, against Purchaser, its successors or assigns, its property or the U.S. Assets, such persons' or entities' liens, claims or interests, provided, for the avoidance of doubt, this provision does not infer that any persons or entities' liens, claims or interests, including the Nilex Claims, survive the entry of this Order. Subject to the terms, conditions, and provisions of this Sale Order, all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of Nilex USA to sell and transfer the U.S. Assets to the Purchaser in accordance with the terms of the Sale Documents and this Sale Order.

14. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any property, and each of the foregoing entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale.

Prohibition of Actions Against the Purchaser

15. Except for the Permitted Encumbrances and Assumed Liabilities (as defined in the APA), or as otherwise expressly provided for in this Sale Order or the APA, the Purchaser shall not have any liability or other obligation of the Nilex Debtors arising under or related to any of the U.S. Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the APA, the Purchaser shall not be liable for any of the Nilex Claims against the Nilex Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor, or transferee liability, labor law, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the US Closing, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including, but not limited to, liabilities on account of warranties, intercompany loans, and receivables among the Nilex Debtors, Environmental liabilities, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the U.S. Assets prior to the US Closing. The Purchaser has given substantial consideration under the APA for the benefit of Nilex USA and its creditors. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases, if any, of any potential Nilex Claims pursuant to this Sale Order, which releases, if any, shall be deemed to have been given in favor of the Purchaser by all holders of the Nilex Claims against any of the Nilex Debtors or any of the U.S. Assets, other than holders relating to the Assumed Liabilities or Permitted Encumbrances.

OTHER PROVISIONS

16. For the avoidance of doubt, only those liens, claims, interests, and other encumbrances in or on the U.S. Assets being transferred to the Purchaser pursuant to the Sale Documents are being transferred free and clear pursuant to the terms of this Sale Order,⁷ and any and all other assets of Nilex USA that the Purchaser is not acquiring shall remain subject to all valid pre-existing liens, claims, interests and other encumbrances. Any releases, terminations, termination statements, assignments, consents, or other instruments relating to liens or other encumbrances in or on the U.S. Assets shall properly be limited to the U.S. Assets being transferred to, and Assumed Liabilities being assumed by Purchaser.

17. Except as otherwise expressly set forth in this Order or the Sale Documents, Purchaser shall not have any liability or other obligation to Nilex USA arising under or related to any of the U.S. Assets.

18. Purchaser shall not be liable for any liens, claims and interests of any kind or nature whatsoever, including but not limited to the Nilex Claims in or against Nilex USA or any of its predecessors or affiliates, and Purchaser shall have no successor or vicarious liabilities of any kind or character including, but not limited to, liabilities on account of any tax arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the U.S. Assets prior to the closing of the Sale, and Purchaser shall be exonerated of any successor liability to any state or federal taxing authority with regard to any tax, including sales tax.

19. Except as otherwise expressly set forth in this Order or the Sale Documents, Purchaser shall not have any liability or other obligation to Nilex USA arising under or related to

⁷ For the avoidance of doubt, this reservation in no way preserves any liens, claims, interest and other encumbrances released in the Canadian Proceedings as to the Canadian Assets or modifies or impacts the previous or future order in the Canadian Proceedings.

any of the U.S. Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Sale Documents, Purchaser shall not be liable for any claims against Nilex USA or any of its predecessors or affiliates, and Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, substantial continuity, the WARN Act and employee benefit and/or welfare plan(s) (including, without limitation, (i) any employment or labor agreements; (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of Nilex USA; (iii) any other employee, workers' compensation, occupational disease, or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, (h) the Consolidated Omnibus Budget Reconciliation Act of 1986, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, or (k) any other state or federal benefits or claims relating to any employment with Nilex USA or any of its respective predecessors; (iv) Environmental claims or liens arising from conditions first existing on or prior to the closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, or similar state statute; (v) any bulk sales or similar law; (vi) any tax statutes or ordinances, including,

without limitation, the Internal Revenue Code of 1986, as amended, whether known or unknown as of the closing date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to Nilex USA any obligations of Nilex USA arising prior to the U.S. Closing; and (vii) any theories of successor liability.

20. The consideration provided by the Purchaser to Nilex USA pursuant to the APA for the U.S. Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or under the laws of the United States, any state, territory, possession or the District of Columbia. The sale of the U.S. Assets to Purchaser by Nilex USA is not a fraudulent transfer under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession or the District of Columbia.

21. Under no circumstances shall Purchaser be deemed a successor of Nilex USA for any liens, claims and interests of any kind or nature whatsoever, including but not limited to the Nilex Claims against or Nilex USA or the U.S. Assets. The sale, transfer, assignment and delivery of the U.S. Assets shall not be subject to any liens, claims and interests of any kind or nature whatsoever, including the Nilex Claims, which shall remain with, and continue to be obligations of Nilex USA. Following the U.S. Closing, no claimholder shall interfere with Purchaser's title to, or use and enjoyment of, the U.S. Assets based on or related to such lien, claim or interest, or any Nilex Claims. The transactions contemplated by the Sale Documents are undertaken by Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the transactions contemplated by the Sale Documents, unless such authorization and consummation

of such transactions are duly stayed pending such appeal. Purchaser is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

22. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these Chapter 15 cases, (b) any subsequent case into which any such chapter 15 cases may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the Sale, the Sale Documents, or the terms of this Order.

23. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), this Order shall be effective immediately upon entry, and Nilex USA and Purchaser are authorized, but are not required, to close the Sale immediately upon entry of this Order, notwithstanding the fourteen-day stay period in Bankruptcy Rule 6004(h), which is expressly waived.

24. To the extent that this Order is inconsistent with any prior order or pleading with respect to the U.S. Sale Motion in these chapter 15 cases, the terms of this Sale Order shall govern.

25. The failure to specifically include any particular provision of the APA in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety; provided, to the extent there are any inconsistencies between the terms of this Sale Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern as to the U.S. Assets.

26. Nilex USA and the Proposal Trustee are authorized to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the U.S. Sale Motion.


27. Nothing in this Sale Order releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under police power statutes or regulations that any entity would be subject to as the owner or operator of property accruing after the U.S. Closing.

28. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent that any of the findings of fact set forth herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law set forth herein constitute findings of fact, they are adopted as such.

29. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Sale and the Sale Documents, all amendments thereto and any waivers and consents there under and each of the agreements executed in connection therewith to which Nilex USA is a party or which have been assigned by Nilex USA to Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Dated this 10th day of January, 2023

BY THE COURT:



Michael E. Romero
United States Bankruptcy Judge