

## HERAEUS TENEVO TERMS AND CONDITIONS OF SALE

The following terms and conditions form a part of and apply to all Heraeus quotations to and orders from Customer. Acceptance of orders by Heraeus is limited exclusively to these terms and conditions together with any attachments and current or subsequent purchase orders signed by an authorized representative of Heraeus (collectively referred to as the "Sales Contract") in order of precedence as follows: the Heraeus Quotation or Confirmation (typed portions control over pre-printed portions), these Terms and Conditions, then Product Specifications. Conflicting terms and conditions presented at any time by Customer shall be considered to be proposals by Customer that go into effect only to the extent accepted in writing by Heraeus.

### 1. Orders and Shipments

a. Sale of Goods. Customer agrees to purchase from Heraeus the goods and/or products described in the quotation or order attached ("Goods").

b. Price. The price and time of payment for the Goods are as described in the quotation or order (the "contract price"). The contract price does not include applicable federal, state and local taxes of any kind in effect on the date of the Sales Contract, unless otherwise agreed to in writing by Heraeus. Customer agrees to pay such taxes directly or reimburse Heraeus for same, unless Customer provides a tax exemption certificate from the applicable taxing authority. The contract price is based on payment by the due date. Payments not received when due will bear a finance charge of 1.5% per month, not to exceed the maximum amount of interest permitted under law, on the unpaid balance including cumulative, unpaid interest charges.

c. Payment Terms. Unless other terms of payment are agreed to in writing, payment of the Contract Price shall be made to Heraeus at address in the quotation. In the event Customer refuses or otherwise declines to accept delivery of Goods under this Sales Contract, Heraeus may, as Customer's agent and without liability to Heraeus, store or arrange for storage of such declined Goods at Customer's expense, and such Goods shall be deemed to be delivered at the time they are either put into storage or turned over to the carrier for shipment, whichever occurs first. Any amounts which become due from Customer under this Sales Contract may not be set off against any other amounts which may be due from Heraeus to Customer under this Sales Contract or otherwise. Unless otherwise stated, all prices are in U.S. dollars.

d. Shipments and Delivery. All transportation, shipping and handling charges shall be paid by Customer.

Heraeus shall pack and ship the Goods in accordance with its then-current practices, unless agreed to otherwise in a writing signed by Heraeus, and Heraeus will select the method of transportation and carrier. Goods shall be deemed delivered at the time they are either (i) turned over to the carrier for shipment or (ii) put into storage for the customer's benefit or per the customer's instructions, whichever occurs first. Times quoted for delivery or readiness for operation are not guaranteed and are Heraeus's best estimates only; Heraeus shall in good faith endeavor to meet such stated times, but reserves the right to vary the times of shipment and delivery. Heraeus shall in no way be liable for any loss, injury, damage or other expense which Customer or any other party may suffer by reason of such variation, and Customer shall have no right to cancel the order, nor be entitled to any damages or setoff for any Goods shipped after the estimated shipment date. Delivery may be subject to issuance of required licensing and approvals by local, state and federal regulatory bodies.

e. Acceptance. Goods will be deemed accepted upon delivery unless Customer rejects the Goods within forty-eight (48) hours of arrival at Customer's designated destination. Claims for shortages, damage, or visible defects must be made in writing within that time period. Customer shall not unreasonably revoke acceptance of Goods that perform to specifications.

f. Title and License. Title and risk of loss to the Goods shall pass to Customer at the time Goods are delivered to Customer. However, Heraeus retains a security interest on Goods until payment in accordance with Section 13 below.

g. Specifications and Performance. The Goods supplied will be substantially in accordance with the specifications provided to Customer, subject to reasonable variations plus or minus. Such reasonable variations shall not be the basis of any claim against Heraeus or its suppliers. Heraeus shall not be responsible for performance figures given in any source other than the specifications. Heraeus reserves the right to supply Goods in fulfillment of its obligations under this Sales Contract, the design or construction of which has been modified, provided that the general performance of the Goods is not adversely affected. Notwithstanding the quantity set forth on Buyer's purchase order, Buyer shall accept and purchase product in a quantity which may be plus or minus ten percent ( $\pm 10\%$ ) of the quantity ordered, due to overruns or under runs in Seller's production process.

h. Additional Work/Customer Changes. Work performed by Heraeus for Customer which is not included in Heraeus's quotation and not shown in Customer's specifications that were accepted in writing by Heraeus shall be

subject to additional charges. Changes requested by Customer after production of Goods has commenced will cause issuance of a new quotation by Heraeus and may result in a new price. No changes may be made without Heraeus's prior written authorization.

i. Payment Prior to Production/Shipping. Heraeus reserves the right to require full or partial prepayment or other assurance of performance of Customer's obligations prior to producing any Goods, performing any services, or making any shipment.

## **2. LIMITED WARRANTY AND DISCLAIMER**

a. Limited Warranty. Heraeus warrants that the Goods will be free from defects in workmanship and materials and will conform to applicable specifications for a period of ninety (90) days from the date of receipt by Customer (the "warranty period"), provided that Customer notify Heraeus in writing of any defects within twenty (20) days of the end of the warranty period.

b. Heraeus's responsibility for defective or non-conforming Goods is limited, at Heraeus's option, to either replacement of the defective Goods or return to Customer of monies actually received by Heraeus from Customer for those defective Goods. Heraeus may require inspection of the defective or non-conforming Goods. However, no Goods shall be returned to Heraeus unless such return shall first have been authorized in writing by Heraeus.

c. Customer will pay Heraeus the cost of all charges, to include but not limited to a reasonable charge for examination and rework if the returned Goods prove not to be defective or for work requested by Customer that exceeds Heraeus obligations under this Warranty.

d. This Warranty extends only to the original Customer of the Goods. This Warranty does not apply to, and Heraeus assumes no responsibility for, damage or defects due to any cause other than those specified above, including, but not limited to, damage or defects arising as a result of misuse, improper installation by Customer's personnel or subcontractors, accident, neglect, modification, repair by Customer, adverse conditions, and demands exceeding performance levels required by applicable specifications by Heraeus. Incorporation of Goods into Customer's product terminates this warranty, even though the warranty period has not expired, unless Customer tests Goods against specifications using tests or methods acceptable to Heraeus prior to that incorporation. In no case, however, shall the warranty extend beyond the 90-day warranty period.

e. THIS WARRANTY IS EXCLUSIVE AND MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO MODIFICATION OR ALTERATION OF THE FOREGOING WARRANTY AND LIMITATION OR REMEDIES PROVISIONS SHALL BE VALD OR ENFORCEABLE UNLESS SET FORTH IN A WRITTEN AGREEMENT SIGNED BY HERAEUS AND THE CUSTOMER.

**3. LIMITED LIABILITY.** IN NO EVENT SHALL HERAEUS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR SHALL IT BE LIABLE FOR DAMGES FOR LOSS OF PROFITS, REVENUE, OR USE INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, OR TORT, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HERAEUS'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS SALES CONTRACT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE GOODS.

## **4. Heraeus's Remedies for Cancellation Due to Anything Other Than Breach; Offset**

a. Heraeus remedies. If Customer terminates or cancels this agreement for any cause other than breach by Heraeus, then, at Heraeus's option, and in addition to all other remedies available at law or in equity: (i) Customer shall accept delivery of and pay the contract price for all Goods which are either finished or ready for shipping; and (ii) Customer shall reimburse Heraeus for (1) all actual costs incurred by Heraeus in connection with the uncompleted order as of receipt of notice of cancellation; and (2) all other costs, including but not limited to, general, selling and administrative expenses, cancellation charges incurred by Heraeus (if any), and a reasonable profit on the terminated portion of this Sales Contract. In the event of the bankruptcy, insolvency, dissolution, modification or amalgamation of, or the institution of voluntary or involuntary receivership proceedings by or against the Customer, then the Heraeus shall have the right to terminate this Agreement with written notice to the Customer.

b. Offset. Heraeus may at any time offset any amounts due to Heraeus from Customer against any discounts, refunds, rebates, warranty work or other amounts due to Customer from Heraeus in respect of any Goods sold by Heraeus to Customer.

**5. Acknowledgement of potentially hazardous Goods shipped.** Customer acknowledges that there may be hazards associated with the storage, use and/or disposal of Goods shipped by Heraeus. Customer agrees that only qualified and

trained individuals who have been made aware of these potential hazards will handle the Goods.

**6. Insurance and Compliance with Laws.** Customer assumes responsibility for insuring that the storage, use and/or disposal of Goods shipped by Heraeus will be in full compliance with all applicable laws and regulations, including those relating to toxic substances and environmental matters. Customer assumes all risk and liability resulting from its use and/or disposal of Goods shipped to Customer by Heraeus. In filling this Sales Contract, Heraeus shall comply with all applicable federal, state and local employment, environmental and other laws, government regulations and orders.

**7. Export Control.** Unless otherwise agreed by Heraeus in writing, Heraeus's provision of Goods to Customer is with the understanding that the Goods are not for export. U.S. export laws as contained in the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR") are applicable to any controlled technical data provided under this Sales Contract. Any such controlled technical data is not to be placed in the public domain, exported from the U.S., or given to any foreign person in the U.S., without the prior, specific written authorization of the disclosing party, the U.S. Department of State or the U.S. Department of Commerce as applicable.

**8. Indemnity.** Customer shall indemnify and hold harmless Heraeus from and against any and all liability, damages, costs, losses and expenses arising out of or in connection with any personal injury, including death, or any damage to property or business which may be caused by Customer's breach of the Sales Contract, or use, operation, or failure to operate the Goods delivered under this Sales Contract, except to the extent caused by the gross negligence or willful misconduct of Heraeus.

**9. Additional Terms for Precious Metals Agreements**

a. Metal Disposition. Heraeus may hold precious metal belonging to Customer in a pool account, in not-yet-settled refining lots, of different types, mixes and states of composition, or in other ways at Heraeus or in transit, any of which is defined as "Customer Metal" in this section. Heraeus may, at its sole discretion, sell Customer Metal in whole or in part upon the occurrence of one or more of the following events: (i) failure of Customer timely to pay any Heraeus invoice; (ii) any default by Customer under any agreement with Heraeus; or (iii) the filing of a bankruptcy or similar proceeding by or against Customer under any bankruptcy, insolvency, or similar law of any jurisdiction. In any such event when Heraeus opts to sell, Heraeus shall sell Customer Metal at market price (including by sale to Heraeus itself) and apply the proceeds after reasonable costs

against any amounts due to Heraeus by Customer for any service or sale previously and/or hereafter made, regardless of whether or not such service or sale has any relationship at all to the Customer Metal.

b. Price. Where the Sales Contract involves precious metals and there are any conflicts between this term and Price, in Section 1.b above, this paragraph controls. Metal prices quoted by Heraeus are estimates which are subject to change in accordance with metal markets, except where specifically confirmed to a fixed price by written agreement. In the event an error or omission is discovered as to the amount or price of precious metal within forty-five (45) days of delivery of the Goods to Customer, Heraeus may recompute the purchase price and deliver a revised invoice to Customer for payment. Unless specifically stated to the contrary in writing by Heraeus, written agreements between Customer and Heraeus covering Customer-supplied metals ("pool account agreements") which are in effect as of the date of the Sales Contract will govern in the case of a difference in terms between the Sales Contract and the pool account agreement. Customer shall hold and retain title to the precious metals received into Customer's pool account or to an equivalent amount of the like metals substituted therefore. Such substitution and the commingling and use of such precious metals by Heraeus are hereby authorized. Heraeus shall indemnify Customer against risk of loss or destruction of metals credited to Customer's pool accounts while such metals are in Heraeus's possession. Heraeus reserves the right to charge a pool account surcharge on various precious metals. Customer grants Heraeus the right to offset and charge Customer's pool account, if any, with past due amounts owed by Customer.

**10. Property Rights**

a. Intellectual Property. "Intellectual Property" as used in this Sales Contract means (i) patents, patent applications, continuations, continuation-in-part, divisions, reissues, patent disclosures, inventions (whether or not patentable) or improvements thereto; (ii) trademarks, service marks, domain names, logos, trade dress and trade names (whether registered or unregistered), and pending applications to register the foregoing; (iii) copyrights (whether registered or unregistered) and pending applications to register the same; and (iv) confidential ideas, trade secrets, know-how, concepts, methods, processes, formula, reports, data and other proprietary information. Except as specifically set forth herein, all right, title and interest in and to a party's Intellectual Property shall be solely and exclusively vested in such party and no ownership, interest, right or license is granted to the other party.

b. Created Intellectual Property. As an exception to 10.a above, Customer recognizes and acknowledges that, in

the course of manufacturing Goods, Heraeus may invent, develop or discover methods, techniques, processes, technology, know-how, formulas or software that have application in Heraeus's business generally and are not specific to the Goods ("Heraeus's Developments"). Heraeus's Developments shall be the sole and exclusive property of Heraeus.

c. No Reverse Engineering. In consideration of receipt of Goods, Customer covenants and agrees not to reverse engineer any Goods purchased, not to assist any other party (including a parent, member, subsidiary, affiliate or otherwise) to do so.

d. Infringement Indemnification. Heraeus will defend and indemnify Customer against a claim that the Goods infringe a United States copyright or patent, provided that: (i) Customer notifies Heraeus in writing within 20 days of the claim; (ii) Heraeus has sole control of the defense and all related settlement negotiations; and (ii) Customer provides Heraeus with the assistance, information and authority necessary to perform Heraeus's obligations under this section. Heraeus will have no defense or indemnity obligation for any claim based upon modification of Goods, other than by Heraeus, or use or combination of Goods with a Customer's or any third party's products. THE FOREGOING STATES HERAEUS'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 11. Miscellaneous

a. Nothing in this Sales Contract shall be construed to create a partnership, joint venture or agency relationship between the parties.

b. This Sales Contract is entered into solely for the benefit of the parties hereto, and no other person shall acquire the right to enforce any provision of this agreement against either party.

c. Force Majeure. If Heraeus's ability to perform its obligations under this Sales Contract is limited, delayed or prevented in whole or in part by any reason whatsoever not reasonably within the control of Heraeus, or its suppliers, including, but not limited to, act of God, war, invasion, act of foreign enemy, hostilities, civil war, rebellion, civil strife, strikes or industrial dispute, insolvency or bankruptcy of a supplier, or by any law, rule, regulation, order or other action by any public authority, transportation delays or the refusal of any necessary license, then Heraeus shall be excused, discharged, and released from performance to the extent such performance is so limited, delayed or prevented, without liability of any kind.

d. Any provision of this Sales Contract prohibited by or unlawful under any applicable law of any jurisdiction shall, as to such jurisdiction, be deemed invalid, without invalidating the remaining provisions of this Sales Contract; provided, however, that where the provisions of any such applicable law may be waived, Customer agrees to waive such provisions to the full extent permitted by law, to the end that this Sales Contract shall otherwise be deemed to be valid, binding, and enforceable in accordance with its terms.

e. No Assignment. This Sales Contract may not be assigned by either party without the prior written consent of the other party except to (i) a direct or indirect, wholly-owned subsidiary, (ii) any third party who will acquire, by sale of assets or otherwise (including merger), all or substantially all of the assets of such party or (iii) any majority-owned or majority-controlled entity of the party. No such assignment will relieve the assigning party of its obligations hereunder.

f. Notices. All notices, requests or other communication required or permitted to be given under this Sales Contract will be in writing and sent by facsimile, personal delivery, or registered, certified mail, return receipt requested, to the other party at address (or facsimile number) set forth in the quotation or purchase order. Any notice given as aforesaid will be deemed given and effective upon actual delivery. Each party may change its address of notice by written notice.

## g. Governing Law, Arbitration and Venue.

(i) This Sales Contract will be construed in accordance with and governed solely by the laws of the State of New York, USA, without regard to its conflict of laws rules. Any dispute arising out of this Sales Contract shall be resolved by arbitration administered and resolved by the American Arbitration Association ("AAA") by a single arbitrator in accordance with the Commercial Arbitration Rules of the AAA, including the Optional Rules for Emergency Measures of Protection, in effect at the time the arbitration is commenced (except as modified herein). Any arbitration or award shall issue within one (1) year from the date claimant filed its notice of intention to arbitrate (i.e. the demand), and the arbitrator shall agree to comply with this schedule before accepting appointment. Any evidentiary hearing shall be held on consecutive hearing days. Any monetary award in the arbitration initiated under this clause shall include pre-award interest at the rate of one and a half percent (1.5%) per month from the time of the acts giving rise to the award. Judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction.

(ii) If arbitration as above fails or is impossible, any actions brought under this Sales Contract will have venue solely in the United States District Court for the Southern District of New York or in the Supreme Court of New York County, New York and Customer waives any and all objection to venue and jurisdiction of such courts.

**12. Additional Remedies and Survival.** Notwithstanding the arbitration provision in Section 11.g above, each party agrees that certain breaches or threatened breaches of this Sales Contract will cause the other party irreparable harm, such as a release or threatened release of confidential and proprietary information described in Section 10 above, that will not be adequately compensated for by monetary damages, that the non-breaching party shall be entitled to obtain injunctive relief to protect its rights hereunder. The parties agree that the prevailing party in any action or claim under this Sales Contract shall have the right to recover its costs and expenses, including reasonable attorneys' fees, from the non-prevailing party. All provisions that are continuing in nature, including but not limited to those involving confidential information, will survive termination of this Sales Contract.

**13. Grant of Security Interest.** To secure payment and performance of all Customer's obligations under this Sales Contract, Customer grants to Heraeus a security interest in the Goods until payment in full and performance by Customer of all such obligations. Upon request, Customer shall execute and deliver to Heraeus a supplement to this Sales Contract, security agreement, financing statement or other appropriate instrument to constitute the Goods as the unencumbered security for the obligations of Customer under this Sales Contract, or to enable Heraeus to comply with all applicable filing or recording laws.

**14. Merger and Amendment.** Excepting any executed prior confidentiality agreement between the parties, this Sales Contract (including any current or subsequent purchase orders as accepted by Heraeus) shall constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, understandings, representations, discussions, proposals, and the like, written or oral. No other terms or conditions, nor any addition to, waiver or modification of the provisions of this Sales Contract shall be binding unless made in a writing signed by an officer of Heraeus. In the event of a conflict between these terms and conditions and any other terms and conditions, quotations or purchase order, these term and conditions shall take precedence over and supersede any conflicting terms. The pre-printed portions of Customer's acceptance forms, packing slips, invoices or other documents shall not be binding on Heraeus for any purpose.

**15. Waiver.** No waiver of any provision or performance hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of the Sales Contract, or the waiver by either party of any breach of this Sales Contract, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

**16.** This Sales Contract may be executed in counterparts and by fax.