

## Heraeus – General Terms of Delivery 01/2005 for Commercial Transactions with Business Enterprises

### 1 Important Information

All deliveries of Heraeus in commercial transactions with business enterprises are subject to the following terms of delivery only. In as much as there are gaps in these terms of delivery, the provisions of law shall apply. Customers' general terms and conditions of business which deviate from the following terms of delivery or the provisions of law will not be accepted, and they will also not be accepted by Heraeus in the execution of a contract, in particular by the delivery of goods.

Heraeus shall only be bound to an offer through a written acceptance, which may take the form of an invoice accompanying the goods. Heraeus shall not check the correctness of the information provided by the customer upon which the offer or order confirmation is based and Heraeus shall also not check if the execution of the customer's order based on such information infringes any third party property rights. Unless the customer informs Heraeus in writing that only a specific make and design of a product is desired, Heraeus will be free to deliver make and design of that product which is technologically most advanced.

Unless otherwise previously agreed in writing, Heraeus will deliver products within the tolerances admissible under the relevant German or European technical standards, in particular DIN, VDE, EN ISO, etc. Engineering changes which become necessary as a result of changes in the production, for reasons of product management, or by virtue of the law shall be permissible.

### 2 Delivery

Unless otherwise agreed upon in writing, deliveries are effected 'ex factory'/ex works' pursuant to the Incoterms 2000. Only the confirmed time of delivery by Heraeus is binding upon the parties.

The commencement of a delivery period requires timely receipt of all documents, material and information from the customer necessary for the execution of the contract, as well as all authorizations and permits which may be required and which are to be submitted by the customer to Heraeus with the necessary contents and/or of the quality agreed upon.

In case Heraeus is unable to perform its delivery obligations due to belated self-supply or forces beyond its control (force majeure), the contract is not terminated but merely suspended until the removal of such impossibilities has made it possible to deliver. This applies also in the case Heraeus has been in default at the time these impossibilities arose. All claims for damages against Heraeus in connection with the aforesaid impossibilities are excluded.

### 3 Default

The customer's possible claims for delay or default of contract are excluded in cases of slight negligence by Heraeus' legal representatives, agents or employees.

The customer's possible claims for delay or default of contract are also excluded if the delay or default of contract is based on the delivery of a defective product and Heraeus performs its contractual duties by subsequent delivery of a faultfree product within a reasonable period of time.

### 4 Passing of the Risk

If the product is to be shipped, the risk shall pass at that point of time at which Heraeus has delivered the product to the person in charge of shipping it. In case the delivery is delayed for reasons within the customer's responsibility, the risk shall pass to the customer upon receipt of the notification that the product is ready for shipment.

Unless otherwise agreed upon in writing, Heraeus shall insure a shipment for its own benefit at the expense of the customer, since under German law title to the goods does not vest in the buyer until he has received and paid for them. No forwarding agent's transport, logistics and storage insurance shall be taken out at the expense of Heraeus.

### 5 Inspection and Rejection of Goods

Upon receipt, each shipment shall be inspected for defects, damages and completeness. All complaints shall be promptly reported to Heraeus in writing.

In case of damage to the goods while in transit, a purchasing merchant must obtain a written damage report from the carrier, and, after immediate consultation with Heraeus, have an insurance adjuster issue a certificate of damage, if Heraeus requires it.

### 6 Claims for Defects

For defects in a product delivered Heraeus' obligation to perform the contract shall, at its choice, consist of subsequent performance by remedy of the defect or delivery of a faultfree product. The customer has no right to remedy a defect himself and claim reimbursement of the costs thereby incurred by him. If the subsequent performance by Heraeus should still fail in the second attempt, the customer may reduce the purchase price or, upon

the existence of the statutory prerequisites, rescind the contract. Heraeus may reclaim from the customer a product complained of as defective for investigation of the defect. If Heraeus delivers a faultfree product within the scope of subsequent performance, or if the customer rescinds the contract with Heraeus with legal effect, Heraeus may claim restitution and return of the product complained of as defective subject to the provisions of Sections 346 thru 348 of the German Civil Code (BGB). If Heraeus is liable to pay damages on account of a defect by virtue of the law, Heraeus' liability for such damages shall be limited to the extent stipulated in clause 7 hereof.

The customer's claims for defects become statute-barred after 1 year from the date of delivery/acceptance of the product. The foregoing time limit does not apply to defects which are based on intent, to defects which are fraudulently concealed, to defects which are based on a deviation or divergence from a guaranty/warranty which Heraeus may have given as well as to defects in fixed constructions or any items delivered which, in accordance with their intended purpose, are customarily used for a fixed construction and which have caused its defectiveness. In all these cases the statutory periods shall be controlling. The foregoing shall be without prejudice to the legal regulations on suspension of the statute of limitations, suspension, and re-commencement of the time limits.

The products delivered by Heraeus will be free from defects of quality if they are of the condition as agreed in writing between Heraeus and the customer in a specification or in a shipping instruction.

In the absence of such written agreement with the customer, the products delivered by Heraeus will be free from defects of quality if they are of the condition as finally described in the technical data sheets, specifications or drawings of Heraeus, or if they are of a condition which diverges only insignificantly from the agreed/described condition.

The customer's information on the use of a product shall only be authoritative if Heraeus has expressly confirmed to the customer in writing at the time of conclusion of the contract that the product delivered is fit for the customer's intended purpose of use. General information on the use of a product or examples for the application of a product given by Heraeus in product brochures or other advertising media do not release the customer from a careful inspection of the product delivered for its fitness for the customer's concrete purpose of use.

## **7 Compensatory Damages**

Heraeus will assume liability within the legal limits for damages which are based on a willful act or omission or gross negligence by its legal representatives or senior executives or on a willful act or omission by its agents or other employees as well as for damages from bodily injury. In the case of gross negligence by agents or other employees of Heraeus or in the case of a slightly negligent breach of essential contractual duties which are indispensable for the attainment of the contract purpose and which the customer must therefore be able to rely upon, the liability of Heraeus within the legal limits is limited to such damages the nature and extent of which were foreseeable to Heraeus at the time of the conclusion of the contract. Above and beyond the foregoing, all claims of the customer for compensation of any direct or indirect damage - irrespective of the cause in law and including possible claims for damages from the breach of pre-contractual duties and damages in tort - are excluded.

Contractual penalties or liquidated damages the customer may have to pay to third parties will only be compensated by Heraeus if this has been agreed with the customer in writing beforehand.

The legal liability of Heraeus for the absence of a guaranteed/warranted quality or condition of the product and the liability of Heraeus under the German Product Liability Act of 15 December 1989 remain unaffected.

## **8 Default in Payment**

Subject to evidence of a higher damage, Heraeus may charge 5.00 € each for the second and each further reasonable reminder. The production of evidence of an absent or minor damage shall be reserved to the customer.

Heraeus shall be entitled to charge interest for default at the statutory rate, but no less than 10%. The production of evidence of an absent or minor loss of interest shall be reserved to the customer, that of a higher loss of interest shall be reserved to Heraeus.

## **9 Reservation of Title**

Heraeus retains title to all products delivered until all previous and present contract obligations, negotiable instrument claims, as well as all past and present debts have been satisfied in full. If, in connection with a payment, a liability for Heraeus arises due to any negotiable instrument transaction, then the reservation of title stands until Heraeus is absolved or excluded from all obligations.

The customer may use the products delivered within the scope of his ordinary and proper course of business prior to full payment of the aforementioned obligations, claims and debts (9.1), unless a prohibition of assignment exists with third parties for the future claims already assigned to Heraeus as set forth in clause 9.3. Pledging of security interests or liens, in as much as Heraeus' rights are affected, are subject to Heraeus' prior written consent.

As further security for Heraeus' claims described in clause 9.1, the customer will assign immediately to Heraeus those claims - including claims from open bills or current account - which may arise against his contracting partners or third parties from the resale of the original or modified products. Heraeus accepts this assignment of claims, which consists of its interest in the products sold by its customer to third parties. Heraeus' interest is the invoice amount (including VAT) of its products sold to the customer.

The customer may collect the assigned future claims outlined in clause 9.3 within the scope of his ordinary and proper course of business. This authorization of collecting assigned future claims includes the direct debiting of claims,

always provided, however, that the customer ensures by prior agreement with his bank that the amounts received are exempt from the bank's lien and that the customer is thus able to meet his obligation to transfer his proceeds to Heraeus at any time. This authorization of collecting assigned future claims expires as soon as the customer defaults in the payment of his liabilities to Heraeus. Upon the expiration of such authorization, Heraeus is entitled to disclose the assigned claims and demand any and all information and documentation from the customer required for the assertion of these claims.

As long as the title to the property delivered has not passed from Heraeus (9.1), any improvement of or additions to these products will be considered to be in part those of Heraeus, without, however, obligating it in any way or manner. Heraeus thus acquires by accession a co-ownership in the property. The amount of this co-ownership is determined by the ratio between the value of the products subject to the reservation of title used for the additions to the property and the value of the property at the time of accession. The value added due to the accession remains untouched and shall be due to the customer. The customer's purchase lien to the products subject to the reservation of title extends to the co-ownership of Heraeus. The customer shall be free to dispose of Heraeus' co-ownership subject to the foregoing stipulations.

Should the actual value of the securities existing for Heraeus exceed the secured claims of Heraeus by more than 10% - be it solely on the basis of this reservation-of-title stipulation or together with other securities - Heraeus shall be obliged to release additional securities of its own choice upon the customer's request.

## **10 Setoff - Retention**

The customer's right of setoff is limited to uncontested or non-appealable claims only.

The rights of retention pursuant to Section 273 of the German Civil Code (BGB) and Sections 369 et seq. of the German Commercial Code (HGB) shall be due to the customer only in as much as the claim substantiating these rights is based on the same legal relationship as the claim of Heraeus. This limitation does not apply if the customer's counterclaims are uncontested or non-appealable. The customer shall not be entitled to satisfy his claim pursuant to Section 371 of the German Commercial Code (HGB).

## **11 Weight Accounts for Precious Metals**

In the commercial intercourse involving precious metals Heraeus maintains weight accounts. The precious metal stocks of the individual account holders are not stored separately. All account holders together form a community of proprietors which is managed by Heraeus.

Each account holder acquires by accession a co-ownership in the total existing stock of precious metals, which is expressed in and limited to the troy weight of each precious metal credited to his account. In case of a purchase or sale of precious metals, the passing of the title is effected by a credit or debit entry in the respective weight account.

## **12 Competent Courts**

The parties hereto will first attempt to settle all their legal and technical disputes through negotiation. If no compromise can be reached, then the Frankfurt courts, in the State of Hessen, Germany, shall be the competent courts for all legal actions that may arise between the parties.

However, Heraeus shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the law of the Federal Republic of Germany or the law of the country in which the customer has his registered place of business.

## **13 Miscellaneous**

Place of performance for the customer's payments shall be Heraeus' registered place of business.

Should any clause, paragraph, sub-paragraph, sentence or phrase of these General Terms of Delivery be or become invalid or unenforceable, then such clause, paragraph, sub-paragraph, sentence or phrase shall be deemed separated from the rest of these General Terms of Delivery, which shall remain in full force and effect.

These General Terms of Delivery and any agreement between the parties shall be governed by and construed in accordance with the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) and the Law of Conflict of Laws. Any reference to other legal systems is excluded.

# Heraeus – General Terms of Purchase 09/2009

## 1 Scope

All purchase orders (deliveries of goods and provision of services) of Heraeus Holding GmbH and of the companies affiliated to it and domiciled in Germany ("Heraeus") are subject to the following General Terms of Purchase ("GTP") only. Supplier's general terms and conditions which deviate from these GTP or the provisions of law will not be accepted by Heraeus except with its express prior written consent. The supplier's general terms and conditions will also not become part of a contract between Heraeus and the supplier even if Heraeus, although being aware of the supplier's deviating or contravening terms and conditions, takes delivery of goods, accepts services or effects payment for such deliveries or services.

## 2 Offer and Formation of a Contract

2.1 All orders, agreements and changes shall be binding only if placed or confirmed by Heraeus in writing. All correspondence must be exchanged with the purchasing department of Heraeus.

2.2 Orders placed by Heraeus without a time limit for acceptance may be accepted by the supplier only within fourteen (14) days from the order date.

2.3 Quotations are binding and non-refundable unless otherwise expressly agreed in writing.

2.4 In case of any deviation or variance between the supplier's order confirmation and Heraeus' purchase order, a contract shall be formed only if the supplier has expressly advised Heraeus of the deviation and Heraeus has agreed to such deviation in writing.

## 3 Examination and Procurement Duties

3.1 Within the scope of its general and special professional knowledge, the supplier shall examine all drawings, calculations, specifications and other terms of reference provided by Heraeus for errors and inconsistencies on its own initiative and shall report to and clarify with Heraeus all concerns or objections, if any, promptly in writing.

3.2 The supplier is fully liable - also without fault on its part - for the procurement of all subcontracted materials and for all services which are required for the goods ordered by Heraeus.

## 4 Delivery; Supplier's Lien

4.1 The period of delivery/performance specified by Heraeus in the purchase order is binding. If the purchase order does not specify such period, delivery of the goods or performance of the service, respectively, shall be effected within fourteen (14) days after the date of the purchase order.

4.2 If the supplier is unable to comply with the binding period of delivery/performance, set forth in clause 4.1, the supplier shall notify Heraeus promptly and advise a practicable date for the delivery/performance. In addition, the supplier is committed to notify Heraeus without request of any difficulties in delivery/performance which may arise, for any reason whatsoever, immediately after such difficulties have come to the supplier's knowledge.

4.3 The supplier is obligated to strictly comply with all instructions and requirements of Heraeus as regards mode of transport, forwarding agent, and shipping instructions.

4.4 All deliveries and services shall be effected DDP "Point of Use" (Incoterms 2000). If delivery is made to construction sites or directly to third parties, unloading shall be at the cost and risk of the supplier.

4.5 Partial deliveries, overdeliveries or under-deliveries are permissible only with the express written approval of Heraeus, except in case Heraeus can be reasonably expected to accept such type of delivery. The supplier is committed to attach to each shipment a delivery note exactly specifying the contents of the shipment, the net weight per item, and the complete SAP purchase order number of Heraeus.

4.6 The unconditional acceptance by Heraeus of a late delivery or late performance does not constitute a waiver by Heraeus of any compensatory claims arising to it from such late delivery or late performance; the foregoing shall apply until Heraeus has fully settled all payments owed by it for the goods or services so affected.

4.7 With regard to quantities, weights and dimensions, the figures determined by Heraeus during its incoming inspection shall be controlling, unless otherwise evidenced by the supplier.

4.8 The supplier shall provide reasonable assistance to Heraeus in obtaining preferential tariffs and other governmental benefits and submit to Heraeus all supporting records and documents, especially certificates of origin, which are requested by Heraeus for this purpose.

4.9 If any payment instruments, shipping documents, certificates of origin or sales tax vouchers are missing, improper or incorrect, Heraeus reserves the right to refuse acceptance of the goods at the supplier's cost and risk.

4.10 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges, unless otherwise agreed.

4.11 Any contractual liens and reservations of title by the supplier are in any case subject to a separate written agreement between Heraeus and the supplier.

## 5 Force Majeure

Acts of God, labor disputes, operational breakdowns through no fault or negligence of Heraeus, actions by any governmental authority and other events or circumstances beyond Heraeus' control will entitle Heraeus -

notwithstanding any other rights or remedies available to it - to rescind the contract in whole or in part if such circumstances or events continue for a significant period of time and result in a substantial decrease in Heraeus' demand.

## **6 Contractual Penalties**

6.1 In the event that the supplier defaults in the timely performance of its duty to deliver/provide a service, Heraeus may claim a contractual penalty at the rate of 0.5% of the aggregate order value for each commenced calendar week of the supplier's default, but no more than 5% of the aggregate order value. This shall not apply if the supplier furnishes valid proof that the default was caused by reasons beyond the supplier's control.

6.2 The contractual penalty pursuant to clause 6.1 shall be incurred as soon as the supplier defaults in delivery. The contractual penalty is immediately due for payment.

6.3 Heraeus may assert the contractual penalty in addition to its claim for performance of the supplier's duty to deliver. If Heraeus accepts the supplier's delayed performance, Heraeus may claim the contractual penalty also if it has not expressly reserved this right at the time of receipt of delivery. Heraeus shall be obligated to declare the reservation of its right to assert the contractual penalty no later than at the time of its final payment of the delivery concerned. This declaration of Heraeus may be given on a printed form.

6.4 The assertion of any further damage by Heraeus shall not be excluded, but the contractual penalty pursuant to clause 6.1 shall be set off against any such further damage.

## **7 Claims for Defects; Recourse and Product Liability; Insurance**

7.1 The supplier is responsible for the perfect condition of the goods delivered and the services provided and for the existence of warranted characteristics. The supplier is in particular responsible for the conformance of the goods and services to the state of the art, to the generally accepted technical and occupational health and safety regulations of public authorities and trade associations, and for the compliance of the goods and services with all applicable laws.

7.2 Acceptance by Heraeus of the goods and services subject of the contract is subject to an inspection for defects and, in particular, for correctness, completeness and fitness for the intended purpose. Heraeus is entitled to inspect the goods delivered or the services provided to the extent and as soon as reasonably practicable within its ordinary course of business. Heraeus will give notice of obvious and easily recognizable defects within fourteen (14) days after delivery. Above and beyond the foregoing, Heraeus will give notice of defects immediately upon their discovery. In this regard, the supplier waives the defense of a belated notice of defects.

7.3 The statutory provisions on material defects and defects of title shall apply, except as otherwise provided hereinbelow.

7.4 If the supplier, within the scope of subsequent performance of the contract, remedies a defect by rectification or by delivery of a faultfree product, the statutory warranty periods will commence to run again.

7.5 If the supplier defaults in its duty of subsequent performance of the contract within a reasonable time period fixed by Heraeus without having the right to refuse such subsequent performance, Heraeus is entitled to itself remedy, or cause to be remedied by any third party, the defect at the cost of the supplier and to claim from the supplier an advance payment of the costs thereby incurred.

7.6 All costs arising to Heraeus from the supplier's delivery of defective goods or provision of defective services, especially travel and transport expenses, labor and material costs, and the costs of an incoming inspection exceeding the usual scope, shall be borne by the supplier.

7.7 The supplier is obligated to indemnify and hold Heraeus harmless from and against any and all product liability claims, and from any loss or damage arising therefrom, if and to the extent that such claims are attributable to a defect in the goods delivered/manufactured or the services provided by the supplier. If a product liability claim under strict liability should be asserted or entered against Heraeus, the foregoing shall apply only if the supplier is at fault. If the cause of the loss or damage is within the responsibility of the supplier, the burden of proof shall rest on the supplier. In such case, the supplier shall bear any and all costs and expenses necessarily incurred, including the costs of bringing an action or the costs generated by a product recall. Heraeus will inform the supplier of the scope and content of such product recall to the extent practicable and reasonable.

7.8 The supplier commits also to take out and maintain a product liability insurance with adequate coverage.

## **8 Infringement of Third Party Property Rights**

The supplier is liable that no patent rights or other property rights of any third party are infringed by or in connection with the supplier's delivery of goods or provision of services, and the supplier will, upon first written request, indemnify and hold Heraeus harmless from and against any and all claims which are asserted or entered against Heraeus by any third party on account of the infringement of a patent or other property right. The supplier will reimburse Heraeus for all necessary costs and expenses arising to Heraeus out of or in connection with such third party claims. Irrespective of the foregoing, Heraeus shall be entitled to enter with any third party into agreements on the alleged infringement of property rights, especially compromise settlement agreements, also without the consent of the supplier.

## **9 Invoices and Payment Due Date**

9.1 All Invoices must specify the SAP purchase order number of Heraeus, the exact description and quantity of the goods delivered or services provided, and the price per unit or quantity. All invoices must be sent to the address specified in the purchase order. Payment by Heraeus shall not be due until Heraeus' receipt of a correct and complete invoice.

9.2 Unless otherwise agreed, Heraeus will pay all invoices within fourteen (14) days after receipt less 3% discount, or within sixty (60) days net from the date of the invoice.

## **10 Industrial Property Rights and Know-How**

10.1 All right, title and interest in and to any models, samples, drawings, software, documentations and other records as well as all right, title and interest in and to any materials, tools, production and testing equipment and know-how disclosed or released by Heraeus to the supplier shall remain vested solely in Heraeus. Any such items, information and documents must be treated as confidential and may not be transmitted to any third party, unless with the express prior written consent of Heraeus and unless such third party is bound by the same obligations of confidentiality.

10.2 All rights, items and documents set forth in clause 10.1 must be returned to Heraeus, without request, immediately upon performance of the contractual obligation or when they are no longer required by the supplier. Any other use or disposal, whether in fact or in law, and/or any direct or indirect exploitation of such rights, items and documents by the supplier or any third party is expressly prohibited.

10.3 In the case of research, development, construction, engineering or other contracts covering the elaboration of a solution to a technical problem, all right, title and interest in and to any inventions made by the supplier in performing the contract as well as any patents to be applied for, already applied for, or granted on such inventions shall be exclusively due to Heraeus. The same shall apply to any new technical know-how which does not belong to the state of the art. At the request of Heraeus, the supplier will exploit inventions which are made by its employees. The supplier agrees and undertakes to notify Heraeus in writing of any such new technical know-how or employee invention within a period of six (6) weeks. The costs incurred in accordance with the (German) Employees Invention Act will be borne by Heraeus.

## **11 Heraeus Code of Conduct**

By acting responsibly Heraeus wishes to strengthen its good reputation. The principles for responsible action are laid down in the Heraeus Code of Conduct. The supplier commits to comply with all legally binding rules and regulations. This applies in particular to the applicable laws for the protection of fair competition, the export and import prohibitions, the customs and tax regulations, and all rules and regulations for the protection of the environment. The supplier covenants, in particular in its business transactions with Heraeus, not to engage in any bribing of business partners and to ensure for its own staff a fair pay, appropriate working hours, safety at work and a non-discriminating working environment.

## **12 Miscellaneous**

12.1 The place of performance for all payments between Heraeus and the supplier is the registered place of business of Heraeus.

12.2 These General Terms of Purchase and any agreement between Heraeus and the supplier shall be governed by and construed in accordance with the law of the Federal Republic of Germany, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).

12.3 Heraeus and the supplier will first attempt to settle all their legal and technical disputes through negotiation. If no compromise can be reached, then the Frankfurt courts, in the state of Hessen, Germany, shall be the competent courts for all legal actions that may arise between the parties. However, Heraeus shall be entitled to bring, at its sole discretion, an action against the supplier also at the supplier's place of business or at the place of performance.