

General Terms and Conditions for Sales of Products of Heraeus Hong Kong (May/2019)

1. Scope of application

These General Terms and Conditions (these “Terms”) apply to the sales by Heraeus Limited and Heraeus Metals Hong Kong Limited (“Heraeus”) of precious-metal containing products (“Products”) to Heraeus’ customer (“Customer”) as well as to the Products processed or made by Heraeus by using precious metals entirely or partly provided by the Customer. When a specific written contract is concluded by and between Heraeus and the Customer for the sales or processing of the Products, these Terms shall also apply to such sales or processing contract as far as these are not in conflict with the provisions of such written contract and in case of any discrepancy, the relevant provision in such written contract shall prevail. Heraeus hereby rejects any general terms and conditions of the Customer which deviate from these Terms or from applicable law. Heraeus’ confirmation of a written order placed by the Customer is not and should not be construed as Heraeus’ acknowledgement of any of the Customer’s general terms and conditions printed on, attached to, referred to, or otherwise associated with the written order of the Customer.

A contract concluded by Heraeus and the Customer for the sales or processing of the Products by Heraeus to the Customer will be hereinafter referred to as “Contract”. Heraeus and Customer will be hereunder jointly referred to as “Parties” or when the situation requires, in singular, as “Party”.

For the purpose of clarification, these Terms do not apply to the refining and/or recycling of precious metal by Heraeus, to which other general terms and conditions of Heraeus or other contract or agreement (as the case may be) shall apply.

2. Price and Payment

Price of the Products quoted by Heraeus is exclusive of any tax, import and export duties unless otherwise explicitly agreed by Heraeus and the Customer. The Customer shall make full payment for the Products immediately upon acceptance of the order by Heraeus or upon the issuance of the invoice by Heraeus, whichever is earlier, unless otherwise agreed by the Parties.

Titles to all delivered Products hereunder shall remain with Heraeus, unless or until the Customer has made full payment for the Products. Before the Customer obtains title to the Products, the Customer shall take proper care of the Products, and the Customer may use the Products for the common and appropriate purpose of its normal business unless the Customer has been in breach or Heraeus has the right to terminate a Contract and Heraeus has notified the Customer thereof. If the Customer further processes the Products to which Heraeus retains title or incorporates them into or with other products, such new Products containing any parts of the original Products shall become the property of Heraeus.

3. Delivery

Products will be delivered Ex Works Incoterms® 2010 (Heraeus' production site in Hong Kong), unless otherwise agreed by both Parties. Risk of the Products will pass from Heraeus to the Customer when Heraeus delivers the Products to the Customer, the Customer's representative or the first carrier.

Delivery dates written in or indicated in any Contract are estimation only unless otherwise expressly confirmed by both Parties in writing on the binding effect.

In the event Heraeus has a right to rescind a Contract, even without exercising the right of rescission Heraeus may suspend all and any deliveries to the Customer without occurring any liability on Heraeus.

4. Incoming Inspection

The Customer shall carry out an incoming inspection over the Products immediately on the date when it receives the Products. If the Customer finds any apparent defect or damage or shortage during its incoming inspection, the Customer shall immediately (at the latest within two (2) working days as from receipt of the Products) notify Heraeus in writing. The Customer's failure to notify any apparent defect, damage or shortage within the aforesaid time period would be deemed as its waiver of relevant claims against Heraeus relating to such apparent defect, damage or shortage.

5. Warranty

The quality warranty period is subject to the period as declared by Heraeus for the Products, unless otherwise agreed by the Parties. Within the warranty period, if any defect of quality appears which is relevant to the Products and due to a reason that is not attributable to the Customer, Heraeus is responsible to, at its own option, repair or replace the defective Products. Heraeus does not undertake any further liability or damages for or relating to defective Products. Defects of the Products mean clear non-conformity of the Products with the Products' specifications and requirements as agreed in writing by both Parties or the specifications provided by Heraeus. Heraeus is not responsible for fitness of the Products to a special purpose.

6. Confidentiality

Both Parties shall keep confidential the Contracts and all information (including but not limited to the technical materials of the Products such as technical drawings, specifications, photos, emails and other correspondences) received from the other Party in connection with the execution or performance of the Contracts, which is not in public domain ("Confidential Information").

7. Limitation of Liability

To the extent permitted by the mandatory provisions of the applicable law, Heraeus shall not be liable to the Customer or any third party for any incidental, indirect, consequential or punitive damages or lost profits by reason of any alleged breach of these Terms, breach of warranty, misconduct, negligence or any other grounds hereunder, and the aggregate liability of Heraeus arising from or relating to the Products delivered to the Customer shall not exceed the value of the relevant Products excluding the value of the previous metal contained therein.

8. Force Majeure

If, as a result of a force majeure event (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, any law, rule, regulation, order or other action by any public authority, transportation delays or the refusal of any necessary license, explosion, fire, typhoon, flood, earthquake or other severe natural disaster) or as a result of any other unexpected events which are not due to a fault of either Party (including but not limited to non-delivery or delay of subcontractors or third-party suppliers, breakdown of facilities, equipment or software as required for performance of the Contract, or unavailability of raw materials on the market etc.), supply and/or delivery has been delayed for more than eight (8) weeks, or the force majeure event or the unexpected event which prevents one Party from performing its obligations has continued for more than eight (8) weeks and is still continuing, either Party shall have the right to terminate or rescind a Contract concluded hereunder, and Heraeus shall not be held liable for any loss or damage suffered by Customer as a result.

9. Lien

Heraeus and the Customer agree that Heraeus shall be granted a lien on the precious metals owned by the Customer but in Heraeus' possession and the credit items and the balances in favour of the Customer on the Customer's precious metal weight account in order to secure all sums of whatever nature due and payable by the Customer to Heraeus arising from all the business dealings with the Customer. The foregoing lien shall be created as soon as the relevant precious metal has been delivered to Heraeus, or the credit items or the balances in favour of the Customer have been created in the weight account. It is hereby agreed by the Parties that the foregoing lien on the precious metals is enforceable by sale by Heraeus. To the extent permitted by the applicable law, Heraeus may, at any time, set off its own claims against claims of the Customer or its affiliated companies.

10. Rescission

Heraeus may rescind any and all individual Contracts if (1) it is revealed that the Customer provided incorrect or incomplete documentation, information or representation which was a substantial factor for Heraeus's decision to conclude a Contract with the Customer; or (2) the Customer has been in breach under a Contract or any other agreement with Heraeus or any affiliate of Heraeus, which has not been fully remedied; or (3) the Customer engages in fraudulent conduct; or (4) the Customer becomes insolvent; is adjudicated bankrupt; or a property receiver, trustee or custodian is appointed for it; there is an assignment of the Customer's business assets/substance for the benefit of creditors; the Customer liquidates or dissolves; or the occurrence of any action or event involving the Customer which is the equivalent of one or more of the events described in this paragraph hereunder; or (5) the Customer fails to function as a legal entity or to conduct its operations in the normal course of business.

11. Governing Law

These Terms, and Contracts concluded hereunder are governed by and will be construed in accordance with the laws of Hong Kong, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Products (CISG).

If the Customer is legally domiciled in Hong Kong, any dispute, controversy, difference or claim arising out of or relating to these Terms, any Contract concluded hereunder shall be submitted to the Hong Kong court with the jurisdiction at Heraeus' domicile.

If the Customer is legally domiciled outside of Hong Kong, any dispute, controversy, difference or claim arising out of or relating to these Terms, any Contracts concluded hereunder, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it or them shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the notice of arbitration is submitted. The law of this arbitration clause shall be Hong Kong law. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English. The arbitral award shall be final and binding on both Parties. Arbitration fees shall be borne by the losing Party, unless otherwise decided by the arbitration tribunal.