

## Heraeus - General Terms of Purchase 07/2017

### 1 Scope

1.1 All purchase orders (deliveries of goods and provision of services) of Heraeus Materials Malaysia Sdn Bhd and of the companies affiliated to it and domiciled in Malaysia ("Heraeus") are subject to the following General Terms of Purchase ("GTP") only.

1.2 The GTP will apply to any contract formed in accordance with clause 2 to the exclusion of all other terms and conditions, including, without limitation, (i) any general terms and conditions of the supplier which deviate from these GTP and any supplementary provisions in the terms and conditions of the supplier, except where Heraeus gives its express prior written consent to the applicability of the supplier's general terms and conditions, and (ii) any terms and conditions which are implied by trade, custom, practice or course of dealings. 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. The supplier shall confirm the orders placed by Heraeus in written form. However, orders will be deemed accepted if the supplier delivers goods or services to Heraeus in accordance with the orders placed by Heraeus even if such orders are not confirmed by the supplier in written form.

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.

2.5 Prices agreed and specified in the purchase order have been fixed following relevant commercial negotiations between Heraeus and the supplier, who hereby acknowledges that same are competitive on the national and international market, remunerative and to its full satisfaction.

### 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 to exclude or avoid 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 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; Security in the Supply Chain

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. Time is of essence in relation to the performance of the obligations contained in this clause 4.1.

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 Unless otherwise agreed, all deliveries and services shall be effected DDP "Point of Use" (Incoterms 2010). 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, over deliveries or under-deliveries are permissible only with the express written approval of Heraeus which shall not be unreasonably withheld. 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 prevail and be decisive, 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 No contractual liens and reservations of title remains with the supplier, unless expressly agreed in a separate written agreement between Heraeus and the supplier.

4.12 The supplier shall give all organizational instructions and take all organizational measures, in particular in the areas of property protection, security of business partners, personnel and information, as well as in the areas of packaging and transport, which are required to ensure security in the supply chain, for example by adopting the requirements of internationally accepted initiatives on the basis of the WCO SAFE Framework of Standards (especially AEO). The supplier shall protect its deliveries of goods to and the performance of its services for Heraeus against unauthorized access and manipulation and shall have such deliveries and services performed by reliable personnel only. The supplier shall obligate any subcontractors commissioned by it to give corresponding instructions and to take corresponding measures.

4.13 The supplier represents and warrants that the goods (i) correspond with their description and any applicable specifications, drawings, samples and descriptions; (ii) are of satisfactory quality and fit for any purpose held out by the supplier or made known to the supplier by Heraeus expressly or by implication, and in this respect Heraeus relies on the supplier's skill and judgement; (iii) if the supplier is responsible for design of items, the supplier warrants that all items delivered under the order will be suitable for use by Heraeus, including installation by Heraeus in its ultimate products, will be free from defects in design, material and workmanship and shall remain so for a period of at least 12 months after delivery and acceptance by Heraeus unless otherwise stipulated under the order; (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, packaging, storage, handling and delivery of the goods; and (v) do not contain any substances which are restricted by Directive 2011/65/EU (RoHS), that the substances which are contained in the goods and its use(s) are either already registered or not subject to registration in accordance with the Regulation (EC) No. 1907/2006 (REACH) and, if necessary, that an authorisation in accordance with the REACH Regulation has been granted. The supplier shall prepare the safety data sheet pursuant to Annex II of the REACH Regulation, if required, and provide them to Heraeus. If the goods delivered are to be classified as dangerous goods within the meaning of the applicable international rules, standards and guidelines, the supplier must notify Heraeus thereof no later than on the date of the order confirmation.

4.14 Heraeus retains title to, and ownership of, any and all items, such as substances, tools, materials and other items, which are provided by it to the supplier for manufacturing purposes. As long as they are not processed, any such items must be stored separately and insured at replacement value against loss and destruction at the supplier's cost. The processing, blending or combining (further processing) of any such items by the supplier is made on behalf of Heraeus. The same applies to the further processing by Heraeus of the goods delivered to it, so that Heraeus is deemed to be the manufacturer and obtains ownership of the product so manufactured.

4.15 Title to, and ownership of, the goods shall be transferred to Heraeus unconditionally upon delivery and regardless as to whether the purchase price has been paid. If, in the individual case, Heraeus accepts an offer from the supplier for the transfer of ownership of goods which is conditional upon payment of the purchase price, the supplier's reservation of title shall lapse upon payment of the purchase price of the goods at the latest. In such case, Heraeus is authorized to use or resell the goods in the ordinary course of operation or business also prior to the payment of the purchase price.

### 5 Force Majeure

If a force majeure event occurs, being an event which cannot be foreseen, avoided or overcome (including but not limited to unforeseeable natural disaster; fire; flood; strike; lockout; government action or any other event that impairs, delays or stops the production and carriage of products or makes the production and carriage of products unreasonable), the obligations of the affected party for executing the contract during the period when such force majeure event continues will be suspended. The party, who alleges being affected by a force majeure event, shall immediately notify the other party after the occurrence of such force majeure event, take proper measures to reduce or eliminate the impact and use best efforts to resume its performance of the obligations as soon as possible. If, as a result of a force majeure event, supply and/or delivery of the goods has been delayed for more than eight (8) weeks,

or the force majeure 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 the contract, without being held liable for any loss or damage suffered by the other party as a result. For the avoidance of doubt, the supplier's own procurement risk shall not be deemed as a force majeure event hereinafter.

## **6 Liquidated Damages**

6.1 In the event that the supplier defaults in the timely performance of its duty to deliver/provide a service, Heraeus may claim liquidated damages 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. The parties hereby unconditionally and irrevocably acknowledge that the sums stipulated herein would constitute a reasonable compensation and each party hereto hereby waives any objection it may now or hereafter have that those sums would be otherwise than fair and reasonable compensation. Heraeus is entitled to directly deduct such liquidated damages for delay in delivery from its payment. Without prejudice to the above entitlement of Heraeus, if the supplier has been in delay in delivery (which is not due to the Heraeus's fault) for more than 30 days, Heraeus has the right to terminate the contract. The supplier shall fully indemnify Heraeus against all losses incurred by Heraeus (including but not limited to the difference between the price for procuring substitute products from a third party and the price of the goods under the relevant specific contract). This shall not apply if the supplier furnishes valid proof that the default was caused by an event of force majeure.

6.2 The liquidated damages pursuant to clause 6.1 shall be incurred as soon as the supplier defaults in delivery. The liquidated damages are immediately due for payment.

6.3 Heraeus may assert the liquidated damages 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 liquidated damages even if it has not expressly reserved this right at the time of receipt of delivery. Heraeus shall declare the reservation of its right to assert the liquidated damages no later than the time of its final payment of the delivery concerned.

6.4 The assertion of any further damage by Heraeus shall not be excluded.

## **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 Heraeus' inspection is limited to defects which become apparent upon outward examination of the goods during the incoming inspection and to defects which become apparent during quality control by way of random sampling (such as wrong delivery and short delivery, for example). Above and beyond the foregoing, it depends on the feasibility of such an inspection in the ordinary course of business, with due regard to the circumstances in the individual case. Heraeus' duty to give notice of defects which are discovered later remains unaffected.

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

7.4 If the supplier, within the scope of subsequent performance of the contract, remedies a defect by rectification or by delivery of a fault free 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. Any costs incurred by the supplier for the examination and rectification of defects (including any removal and installation costs) shall be borne solely by the supplier even if it turns out that there was actually no defect. Heraeus shall be liable to pay damages to the supplier for unjustified claims for remedy of a defect only if Heraeus has recognized, or grossly negligent failed to recognize, that no defect existed.

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 the cause of the loss or damage is within the responsibility of the supplier, the burden of proof shall rest on the supplier. The supplier shall refund also any and all costs and expenses to the extent of the supplier's indemnity obligation, 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 and to furnish proof of the existence of such insurance to Heraeus upon request.

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

The supplier warrants 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 Prices and Terms of Payment**

9.1 The prices specified in the purchase orders are binding. These prices include any and all services and ancillary costs (such as packaging fees etc.).

9.2 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.

9.3 Unless otherwise agreed, the agreed prices become due and payable within sixty (60) calendar days after full performance of the delivery and/or service (as well as acceptance, if applicable) and receipt of a proper invoice.

9.4 Heraeus may, without limiting any other rights or remedies it may have, set off any amount owed to it by the supplier under the contract against any amounts payable by it to the supplier under the contract and/or any other agreement/contract between Heraeus and the supplier.

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

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 such third party is bound by the same obligations of confidentiality.

10.2 All items, information 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 needed 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 vest exclusively in 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 supplier agrees that at any time and from time to time hereafter, it will upon written request take any and all steps and execute, acknowledge and deliver any and all further instruments and assurances necessary or expedient in order to vest any patents or copyrights or copyright licenses and interests more effectively in Heraeus.

10.4 A party ("receiving party") shall keep in strict confidence all technical and commercial know-how, specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or sub-contractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of performing the receiving party's obligations under the contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential. Any reference to purchase contract or order of Heraeus or to the relationships existing between Heraeus and the supplier with respect to advertising materials produced by the supplier or to the communications to third parties by the supplier shall be previously approved by Heraeus in writing.

## **11 Cancellation and Termination**

11.1 Heraeus may cancel purchase order(s) or any portions thereof for any reason by written notice prior to delivery. Cancellation shall be effective upon the supplier's receipt of the written notice from Heraeus, or thereafter upon the date specified in such cancellation notice. The supplier shall cease operation on subject purchase order(s) in accordance with the cancellation notice. Heraeus will have no liability for cancelled purchase orders other than as set forth in clause 11.2.

11.2 In the event of a cancellation under clause 11.1, upon provision of the relevant documents and proofs by the supplier supporting the amounts of its costs incurred in connection with the cancelled purchase order prior to the effective date of the cancellation (but only to the extent that the supplier cannot, by using reasonable endeavors, reduce or mitigate them), Heraeus will pay the supplier for such reasonable costs, and the supplier will deliver to Heraeus (unless otherwise directed by Heraeus' purchasing department) all completed parts, parts in process, all components procured on account of subject purchase order(s), and any tooling and equipment owned by Heraeus. This shall be the supplier's sole remedy at law and in equity and Heraeus's sole liability, in no event shall Heraeus be liable to the supplier for any sum in excess of the aggregate order value for the cancellation and for damages of any kind whatsoever.

11.3 Heraeus may terminate the contract immediately and without compensation to the supplier by giving the supplier notice to that effect if at any time: (a) the supplier commits a material or persistent breach of the contract, (b) the supplier becomes insolvent or bankrupt, makes an involuntary arrangement with its creditors during liquidation process, enters into administration or go into liquidation, or a receiver or other security holder is appointed over all or any part of the supplier's assets or undertakings; or (c) in the circumstances set out in clauses 5, 6.1 and 12.2.

11.4 In the event of any termination, Heraeus shall not incur any liability whatsoever and the supplier shall not have any rights to damages or indemnification of any nature against Heraeus and hereby expressly waives any such claims. HERAEUS SHALL NOT BE LIABLE FOR PRODUCTION LOSSES, LOST PROFITS, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, AND CONSEQUENTIAL OR ANY OTHER DAMAGES UNDER THESE TERMS OR FROM ANY CAUSE WHATSOEVER.

## **12 Heraeus Code of Conduct**

12.1 Supplier hereby commits to Heraeus to comply with all legally binding rules and regulations, in particular with all applicable laws for the protection of fair competition, all export and import prohibitions in force, all applicable customs and tax regulations as well as all applicable legal regulations for the protection of the environment, and not to offer, promise, or grant any benefits to employees of Heraeus as consideration for the preferential treatment in the procurement of products or services ("bribery"), to ban forced and child labor, and to ensure for its own staff payment of wages in accordance with all applicable labor laws, appropriate working hours, safety at work and a non-discriminating working environment and, in the case of subcontracting, to also bind its subcontractors by the foregoing provisions.

12.2 Heraeus may terminate this Contract without notice in the event that Supplier commits a breach of its obligations set forth in the preceding paragraph. Supplier commits to pay a contractual penalty in the amount of 10% of the order value to Heraeus in the case of bribery, violation of the applicable laws for the protection of fair competition, or violation of the applicable labor laws governing the payment of wages, if the bribery or violation is to the detriment of Heraeus.

## **13 Miscellaneous**

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

13.2 These General Terms of Purchase and any agreement between Heraeus and the supplier shall be governed by and construed in accordance with the laws of Malaysia, 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).

13.3 Heraeus and the supplier will first attempt to settle all their legal and technical disputes through negotiation.

13.4 Any dispute, controversy, difference or claim arising out of or relating to this Contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Kuala Lumpur Regional Centre for Arbitration (KLRCA) under the KLPCA Rules in force when the Notice of Arbitration is submitted. The law of this arbitration clause shall be Malaysia law. The seat of arbitration shall be Malaysia. The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English.

13.5 With respect to personal data of the supplier's employees, officers, servants, agents and advisors that the supplier provides to Heraeus, the supplier confirms that processing such data in accordance with this Contract will not cause Heraeus to breach the Personal Data Protection Act 2010 ("Act") and any applicable data protection legislation.

13.6 Where Heraeus provides to the supplier with the personal data of Heraeus's employees, officers, servants, agents and advisors, the supplier agrees to keep it confidential and in accordance with the Act and any applicable data protection legislation.

13.7 The supplier agrees that Heraeus may process and transfer the personal data of the supplier's employees, officers, servants, agents and advisors to affiliates of Heraeus and/or relevant subcontractors (who may be located in other territories) for the purposes of (i) this Contract, (ii) maintaining Heraeus's operations or administration or management systems, (iii) quality and risk management reviews, or (iv) provision of information about Heraeus and Heraeus range of services.