

Terms of Sale

1. Scope of Application

1.1 These General Terms and Conditions (these "Terms") apply to the sales by Heraeus Materials Technology Taiwan Ltd. ("Heraeus") of products ("Products") to Heraeus' customer ("Customer"). When a specific written contract is concluded by and between Heraeus and the Customer for the sales of the Products by Heraeus, these Terms shall also apply to such sales contract as far as these Terms are not in conflict with the provisions of such written contract and in case of any discrepancy, the relevant provision in such written sales 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.

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

2. Price and Payment

2.1 Price of 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, conclusion of a Sales Contract or upon the issuance of the invoice by Heraeus, whichever is earliest, unless otherwise agreed by the Parties.

2.2 Heraeus may, by giving notice to the Customer prior to delivery, increase the price of the Products to reflect any significant increase in the costs of materials or other costs of manufacture of the products, costs of transport, taxes, customs, levies and other public or administrative duties. Customer shall confirm the increased purchase price within 14 days after receipt of the notice of adaption of the purchase price by Heraeus. If Customer does not confirm the increased purchase price, Heraeus may terminate the contract by giving written notice to the Customer.

2.3 Title 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 Sales 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.

2.4 If the Customer fails to pay any amount when due according to any Sales Contract, the Customer shall pay liquidated damages to Heraeus, which shall be calculated at 0.1% of the total overdue payment per each delayed day. Without prejudicing the above, Heraeus is entitled to terminate the Sales Contract with immediate effect if the Customer has been in delay of any due payment for more than thirty (30) days. If Heraeus terminates the relevant Sales Contract according to the above provisions, Heraeus is entitled to request the Customer to pay liquidated damages amounting to 30% of the total price under relevant Sales Contract, which is payable in addition to the above provided liquidated damages for delay in payment, and the Customer shall be further liable for Heraeus' losses resulting from such termination that are not covered by the liquidated damages. In case of termination hereunder, Heraeus is entitled to take back delivered Products from the Customer.

2.5 The Customer shall pay all amounts due under all Sales Contracts or otherwise due to Heraeus without any deduction or withholding except as required by mandatory law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Heraeus in order to justify withholding payment of any such amount in whole or in part. Heraeus may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by Heraeus to the Customer.

3. Delivery

3.1 Products will be delivered Ex Works Incoterms® 2010 (Heraeus' production site in Taiwan or another location designated by Heraeus), 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.

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

3.3 In the event the Customer has any breach or default which is not fully rectified under these Terms or any Sales Contract or any other agreement with Heraeus, 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 thereof. 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

5.1 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. The above warranty is not applicable to parts which are vulnerable or consumable and is also not applicable to parts, materials or equipment not manufactured by Heraeus, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Heraeus to the extent that Heraeus is able to pass this on to the Customer.

5.2 Heraeus does not undertake any further liability or damages for or relating to defective Products. Defects of the Products mean clear deviation from 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, nor does Heraeus guarantee any effect.

6. Safety

The Products procured by the Customer may cause personal injury or property damage if not used, stored or processed properly. The Customer hereunder expressly acknowledges that it fully understands all relevant safety measures relating to the Products and/or storage, processing or use thereof. The Customer is further responsible to acquaint its employees, managers, consultants, agents, contractors, customers or any other persons on its site who may have access to, store, process

or use the Products, with all necessary safety measures, and shall provide necessary trainings to them. Any loss or liability resulting from the Customer's insufficient or inappropriate safety measures or its failure to notify the relevant person(s) shall be solely assumed by the Customer.

7. Confidentiality

Both Parties shall keep confidential the Sales 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 Sales Contracts, which is not in public domain ("Confidential Information").

8. 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 or otherwise relating to a Sales Contract shall not exceed the value of the relevant Products excluding the value of any precious metal contained therein.

9. 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 Sales 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 Sales Contract concluded hereunder, and Heraeus shall not be held liable for any loss or damage suffered by Customer as a result. For avoidance of doubt, any obligation to make monetary payment shall not be affected, reduced or delayed by or due to any force majeure event or unexpected event as described above.

10. Rescission

Heraeus may rescind any and all individual Sales 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 Sales Contract with the Customer; or (2) the Customer has been in breach under a Sales 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. Notice

Any notice made by either Party to the other Party under these Terms shall be in writing addressed to the other Party at its registered office, its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice. A notice is deemed to have been served if sent by facsimile or E-mail, at the time of delivery; if posted, at the time of expiration of 48 hours (in the case of airmail) or 7 days after the envelope containing the notice is posted.

12. Severability

12.1 Unless specifically stated to the contrary, no failure or delay by Heraeus in exercising any of its rights under these Terms or any Sales Contract shall be deemed to be a waiver of that right, and no waiver by Heraeus of its claim(s) due to any breach of these Terms or any Sales Contract by the Customer shall be deemed as a waiver of future claims of Heraeus due to any subsequent breach of the same or any other provision by the Customer.

12.2 If any clause of these Terms or any Sales Contract be or become invalid, this shall not affect the validity of the remaining clauses. If any part of a certain clause of these Terms or any Sales Contract be or become invalid, this shall not affect the validity of the remaining parts.

13. Governing Law

13.1 These Terms, and Sales Contracts concluded hereunder are governed by and will be construed in accordance with the laws of Taiwan, 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).

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

13.3 If the Customer is legally domiciled outside of Taiwan, any dispute, controversy, difference or claim arising out of or relating to these Terms, any Sales 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 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 three. 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.