

## Terms of Sale

### 1. Scope of Application

All sales, deliveries and services (hereinafter collectively the "**Services**") of Heraeus Medical GmbH ("**Heraeus**") are exclusively subject to the following Terms of Sale. Customers' general terms and conditions of business which deviate from these Terms of Sale or from the law will not be accepted, and they will also not become part of a contract if Heraeus accepts or executes orders from the Customer in awareness of the Customer's opposing or deviating terms and conditions of business.

### 2. Subject Matter and Scope of Services

2.1 All offers of Heraeus are nonbinding and without engagement unless specifically agreed otherwise. Contracts shall be deemed concluded only after Heraeus has issued a written order confirmation or effected delivery of the goods ordered. For order values below 350 €, we charge a minimum quantity surcharge of 50 €.

2.2 The assumption of a procurement risk by Heraeus requires the express written agreement to do so.

2.3 Technical changes which are required for manufacturing reasons, or which are necessary due to legislative changes, or which serve the product update and maintenance, shall be admissible if they are reasonable for the Customer.

### 3. Delivery, Delivery Periods, Packaging, Passing of the Risk

3.1 Heraeus shall be entitled to the partial performance of Services if this is reasonable for the Customer. If the Customer wishes to call off portions of an agreed total quantity for delivery in several partial deliveries, the Customer shall spread such call-offs evenly over the delivery period. The call-off of more than 10% of the total quantity of one partial delivery on one date is subject to the prior written consent of Heraeus.

3.2 The delivery period commences to run only after all issues which are essential for the performance of the contract have been clarified with the Customer and after the Customer has performed all essential acts incumbent on him which are required for the performance of the contract by Heraeus. In particular, the delivery period does not commence to run until Heraeus has received all information from the Customer which is required to effect delivery, or until the Customer has furnished proof that, if required, he has opened a letter of credit, effected prepayment or provided a security, as agreed in the contract. The delivery period will be interrupted by subsequent changes requested by the Customer. After agreement about the desired changes has been achieved, the delivery period re-commences to run.

3.3 Heraeus delivers 'CPT' (named place of destination, Incoterms 2020). If Heraeus solely organizes the transport, the costs of dispatch and the costs of transport insurance will be borne by the Customer.

3.4 The price risk (i.e. the risk of accidental loss or accidental deterioration) shall pass to the Customer at that point in time at which the goods are placed at the Customer's disposal at the facility from which delivery is effected, even if Heraeus has accepted to perform additional services such as loading or transportation of the goods.

3.5 If the performance of a Service is delayed for reasons within the Customer's responsibility, the risk shall pass to the Customer upon receipt of a notification that the Service is ready to be performed. In such case, Heraeus will be permitted to invoice the goods to the Customer as having been delivered, and to store the goods at the Customer's cost and risk. Upon request of the Customer, Heraeus will insure these goods against theft and damage from breakage, transport, fire and water at the Customer's cost.

### 4. Reservation of Self-Supply, Force Majeure

4.1 Heraeus shall not be obligated to perform its contractual obligations to the extent and for so long as Heraeus has not been supplied properly and timely by third-party suppliers with the raw materials, energies or components which are required for the manufacture of the products. Heraeus will inform the Customer of any impairment in the delivery of the products resulting therefrom. In the event of a considerable delay in delivery, both parties shall be entitled to rescind the purchase contract after a reasonable period of time.

4.2 If any performance of contractual obligations is directly or indirectly prevented, restricted or interfered with by reason of any unforeseeable cause not within the reasonable control of the respective party ("**Force Majeure Event**"), the party so affected shall be excused from the performance of its contractual obligations to the extent and for the duration of such prevention, restriction or interference and shall not be liable for any costs or damages incurred by the other or any third party because of non-performance or late performance. In case of a Force Majeure Event, Heraeus shall be entitled, but not obligated, to entrust a third party with the performance of its contractual obligations.

4.3 A Force Majeure Event shall be deemed to exist not only if it is impossible for the party so affected to avoid or overcome the occurrence or the effects of the event which prevents, restricts or interferes with the performance of its contractual obligations but also if the party so affected cannot reasonably be expected to perform its contractual obligations.

4.4 By way of example only, but without limitation, the following shall be considered as Force Majeure Events: Acts of God such as flood, storm, earthquake, compliance with any governmental rules, regulations or orders of any government, public authority or court (e.g. lack of notification, confiscation, expropriation), fire, war, warlike disputes, explosion, riot, insurrection, accidents, terror, piracy, sabotage, invasion, epidemics, pandemics, legitimate industrial action, currency or trade restrictions, embargoes, export restrictions, import restrictions, sanctions, and any operation disruption if caused directly or indirectly by an event outside the reasonable control of the affected party. A Force Majeure Event affecting Heraeus shall also be deemed to exist where Heraeus' sub-suppliers or contractors are affected by any Force Majeure Events.

4.5 The parties agree that the direct and indirect effects of the spread of the coronavirus SARS-COV-2 (or 2019-nCoV virus, hereinafter referred to as "Covid-19") shall constitute a Force Majeure Event if and to the extent that they delay, restrict or prevent the performance of contractual obligations by the affected party, including, without limitation, by reason of (i) any acts of any government or public authority, including the imposition of quarantine orders, operational shutdowns or company closures, or other restrictions or prohibitions, or (ii) non-availability of labor force or suppliers of the affected party due to illness, quarantine, travel restrictions or curfews, or (iii) production capacity restrictions of the affected party or its suppliers, for instance due to hygiene measures or split work shifts. A Force Majeure Event shall not be deemed to exist if, at the time of contracting, the respective acts of any government or public authority had already been adopted and publicly announced, or if the non-availability of labor force or the production capacity restrictions of the affected party were already known.

4.6 The parties also agree that the occurrence of a shortage of gas and its direct and indirect effects shall also constitute a Force Majeure Event if and to the extent that they delay, restrict or prevent the performance of contractual obligations by the affected party. This shall also apply if, at the time of contracting, the occurrence of a shortage of gas was not foreseeable with certainty but seemed possible and the actual occurrence thereof cannot reasonably be avoided by the affected party. The direct and indirect effects of a shortage of gas which constitute a Force Majeure Event include in particular (i) the total or partial unavailability of gas as auxiliary or operating material in the production process of the affected party or its suppliers, and (ii) the total or partial unavailability of natural gas as energy source for the heating of production or administrative buildings at Heraeus

or its suppliers to a level permitted by labor law and for ensuring the room conditions required for product quality.

4.7 The affected party shall notify the other party as to the nature and probable duration of the Force Majeure Event. Furthermore, notification of the actual termination of a Force Majeure Event shall also be given as soon as reasonably possible and also when the end of a Force Majeure Event is already foreseeable.

4.8 The party affected by a Force Majeure Event shall exercise reasonable commercial efforts to resolve the restrictions caused by the Force Majeure Event as promptly as practicable, provided, however, that the limit for "reasonable commercial efforts" shall be reached when the total costs incurred for the performance of the service, including the expenses for resolving the restrictions, exceed 110 % of the price payable by the customer for the specific service affected by the Force Majeure Event.

4.9 If the party affected by a Force Majeure Event is required to incur expenditures for resolving the restrictions caused by the Force Majeure Event which exceed the limit for "reasonable commercial efforts" pursuant to clause 4.8 or if the Force Majeure Event continues for an uninterrupted period of forty-five (45) days, each party may terminate any affected contract by giving written notice to the other party or rescind any such contract, provided that the Force Majeure Event is still in effect at the time when written notice of termination is given.

## **5. Prices, Payment, Default**

5.1 The prices quoted by Heraeus are exclusive of the statutory value-added tax, shipping charges and insurance costs.

5.2 Heraeus may, by giving notice to the customer prior to delivery, increase the price of the Service 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. The Customer shall confirm the increased purchase price within 14 days after receipt of the notice of adaption of the purchase price by Heraeus. If the Customer does not confirm the increased purchase price, Heraeus may terminate the contract by giving written notice to the Customer.

5.3 Invoices are due for payment immediately upon receipt and without any deductions. Cheques will be accepted on account of performance only. The Customer agrees to the electronic transmission of the invoice. All payments by the Customer must be made into the account named by Heraeus. Heraeus will always inform the Customer about a change of the payment account by letter (not by e-mail) and at least one month in advance. The Customer shall be obligated to have the change of the payment account confirmed by a telephone call to a contact person at Heraeus known to the Customer (at a telephone number already known to the Customer). Heraeus shall not be liable for erroneous bank transfers by the Customer or for the manipulation of bank data by third parties.

5.4 Heraeus charges interest for default in payment at the rate of nine (9) percentage points above the applicable base rate p.a. (Section 247 of the German Civil Code (BGB)). The right to furnish proof of a higher or further damage caused by default remains reserved.

5.5 Heraeus shall not be obligated to perform the contract for so long as the Customer fails to perform his own obligations according to contract, including his obligations from other contracts with Heraeus and, in particular, if the Customer defaults in the timely payment of invoices due.

5.6 The Customer may offset counterclaims or withhold payment based on such counterclaims only if such counterclaims are uncontested in writing or nonappealable.

5.7 If the Customer is in default of payment or if there are circumstances which, when applying customary banking standards, justify doubts about the Customer's ability to pay, Heraeus will be entitled to perform outstanding Services only against payment in advance or subject to the provision of a security. In such case, Heraeus will be permitted to declare all of its claims against the Customer immediately due for payment, irrespective of the term of any bills of exchange, and demand securities.

5.8 Subject to evidence of a higher damage, Heraeus will charge 10,00 € for the first and 20,00 € for each further reasonable reminder.

5.9 If, despite a reasonable time limit, a Service which is ready for acceptance is not fully accepted or is accepted too late through no fault of Heraeus, Heraeus will place the goods in storage at the Customer's cost and risk. For such storage Heraeus will charge 0.5% of the invoice amount for each month of the delay in acceptance.

## **6. Warranty, Liability**

6.1 To the extent that specifications of the Service have been agreed in writing, the Service needs to comply with these to be free of defects. Without such express written agreement, German statutory law applies.

6.2 The Customer shall notify Heraeus without delay of all claims for defects which are asserted by its own customers and which relate to Services of Heraeus, otherwise the customer's claims for defects against Heraeus will be excluded. In addition, the Customer shall preserve evidence in the requisite form and provide such evidence to Heraeus. Heraeus may reclaim from the Customer a product complained of as defective (including any existing supporting documents, samples and packing slips) for investigation of the defect (including a destructive examination, if necessary). The Customer's failure to comply with this reasonable request will result in the exclusion of the Customer's claims for defects or incompleteness of Service. The same applies to any claims for defects which are asserted against the Customer by his own customers and which relate to Services of Heraeus.

6.3 For defects in a product, 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 will be entitled to cancel the contract or to reduce the purchase price in accordance with the statutory provisions only if the subsequent performance by Heraeus has failed twice or is unreasonable and the defect complained of is not merely a minor defect. Claims for damages are governed by the provisions in Sec. 6.6 hereof.

6.4 The compensation of any loss or damage is excluded if and to the extent that such loss or damage is caused by the improper use, modification, assembly, installation and/or operation of the products of Heraeus, and not by a fault on the part of Heraeus.

6.5 Any and all claims against Heraeus from the express assumption or acceptance of a guarantee, warranty or a procurement risk, or from the culpable injury to the life, body or health of any person, as well as any claims under the German Product Liability Act (ProdHG) and any other claims arising from a willful or grossly negligent breach of duty by Heraeus become statute-barred in accordance with the statutory provisions. Above and beyond the foregoing, any claims for material defects and defects of title become barred by the statute of limitations after twelve (12) months from the passing of the risk.

6.6 Heraeus will assume unlimited liability to the extent that Heraeus has expressly assumed a guaranty/ warranty or a procurement risk, in the case of a culpable injury to the life, body or health of any person, for claims under the German Product Liability Act, and for other willful or grossly negligent breaches of duty by Heraeus. In the case of slight or ordinary negligence and damage to property or pecuniary losses caused thereby, Heraeus will assume liability only for its breach of essential contractual duties the performance of which is indispensable for the proper fulfillment of the contract and the performance of which the Customer must be able to specifically rely upon; however, such liability of Heraeus is limited to the damage which is typical of the contract and which was foreseeable at the time of contracting. The liability of Heraeus for delay is limited to 0.5% of the value of the Service in delay per each completed week of such delay, up to a maximum rate of 5% of the said value. Any further liability for damages is excluded, irrespective of the legal nature of the claim asserted.

6.7 The foregoing limitations of liability apply on the merits and in terms of amount also to Heraeus' legal representatives, agents and employees and/or other persons in Heraeus' services.

## **7. Quality Assurance**

7.1 Customer ensures compliance with all applicable legal and regulatory obligations as well as all quality management requirements set forth herein. The Customer represents and warrants that it has the expertise and qualified staff to perform its corresponding obligations.

7.2 Should the Customer resell the products of Heraeus, it may only do so with regard to final customers (i.e. customers, which are buying products for their own usage, not for re-selling). In addition, the Customer will register itself as an economic operator in accordance with MDR. The Customer will also verify the correctness of product labelling, declaration of conformity (DoC), CE marking and IFU as well as other accompanying documents of the products received. A sampling method may be applied. The Customer shall not change the labeling of the products nor add additional own labels without the prior written approval of Heraeus. Heraeus will invite the final customers to product onboarding sessions & workshops to ensure proper training and knowledge transfer. To enable this, the re-selling Customer shall inform Heraeus of the identity of its final customers.

7.3 The Customer will handle the products with due care and keep them under dry and cool conditions (>4°C and <25°C). Customer will install a system (barcode scanner, four-eyes principle) which minimizes the risk of a product/batch confusion, and will also install a system, which ensures a correct batch management and traceability. The Customer shall have appropriate systems in place for controlling quarantined, rejected or recalled products as well as for segregating rejected or recalled products from other products.

7.4 Customer shall notify Heraeus within three (3) business days of any regulatory authority inspection related to products retrieved from Heraeus. In case of significant findings that relate to the product the Customer will provide Heraeus with copies of the Inspection Report. Any response to such Inspection Report requires Heraeus' prior review and approval.

7.5 The Customer shall keep clear records of each sale of products, showing (a) the date of sale, (b) the name of the products sold, (c) the quantity of the products sold, and (d) the batch of the product sold, (e) its UDI (as long as no UDI is available: article number) and (f) the name and address of the respective Customer. Such records shall ensure, by use of batch and/or lot numbers, the traceability of the destination of the products and the identifiability of the Customers within forty-eight (48) hours after Heraeus' corresponding request. The records shall be retained for and be readily available for at least twenty (20) years. Any such sales records will be made available to Heraeus only for the purpose of incident evaluations as well as conducting a product recall or other corrective or preventive action and Heraeus may use such records solely for such purpose.

7.6 Should the Customer learn of any complaint regarding the quality and performance, suspected non-conformities and any suspected adverse events associated with the use of the products, it will inform Heraeus immediately. The Customer will provide Heraeus with further information on request.

The Customer shall not make any product available to a final customer if it has reasons to believe that such product is not in conformity with the applicable laws and regulations. If Heraeus decides to conduct a product recall/Field Safety Corrective Action (FSCA)/ Field Action (FA), the Customer shall closely cooperate with Heraeus following Heraeus FSCA/FA written processes and provide Heraeus with all information needed to properly inform the relevant final customers. Customer may not conduct a recall/ FSCA/FA without Heraeus' corresponding request or written consent. To the extent that such recall/ FSCA/FA is caused by Customer's negligence, Customer shall bear and reimburse Heraeus for all reasonable costs and expenses associated therewith.

Customer shall forward any safety relevant local authority request related to the products within 24 hours from receipt to Heraeus. The content of all correspondence with a competent authority needs prior approval from Heraeus.

7.7 Customer will contractually bind all sub-contractors he engages with the distribution of the products by the same quality management obligations set forth in this section and will identify these sub-contractors to Heraeus.

## **8. Reservation of Title**

8.1 Heraeus retains title to all products delivered until the Customer has fully satisfied all of his payment obligations from the business relationship

with Heraeus. This applies also if payments are made in satisfaction of specially designated claims, including claims from cheques and bills of exchange, from open bills or current account.

8.2 The Customer shall have the right to resell, process, mix, blend or combine the goods subject to reservation of title with other items during his ordinary course of business until revocation by Heraeus, which revocation may be declared at any time and without giving reasons.

8.3 The processing or transformation of the goods subject to reservation of title is made for Heraeus as the manufacturer within the meaning defined in Section 950 of the German Civil Code (BGB) without resulting in any obligation on the part of Heraeus. The processed or transformed goods shall constitute goods subject to the reservation of title within the meaning of these Terms of Sale. If the goods subject to reservation of title are processed or inseparably blended/combined with other items which are not owned by Heraeus, Heraeus acquires a co-ownership of the resulting new item in the ratio of the invoice value of the goods subject to reservation of title and the replacement value of the other items used at the time of such processing or blending/combining. If the goods subject to reservation of title are combined or inseparably blended with other items not owned by Heraeus into a uniform item which is to be regarded as main item, the Customer hereby assigns to Heraeus a share of co-ownership which is proportionate to the Customer's ownership of the main item. Heraeus hereby accepts this assignment. The Customer will hold the property so created on behalf of Heraeus free of charge.

8.4 The Customer shall insure the goods subject to reservation of title at his own cost against all standard risks, in particular against fire, burglary and water hazards, handle these goods with care and store them properly.

8.5 In the event of a resale of the goods subject to reservation of title by the Customer, the Customer hereby immediately assigns to Heraeus the purchase price claims against his own Customers arising from such resale. If the Customer resells the goods subject to reservation of title together with other items not delivered by Heraeus, the foregoing assignment applies only in the amount of the value of the goods subject to reservation of title which is specified in the invoice of Heraeus. In the case of a resale of items in which Heraeus has a co-ownership pursuant to Sec. 8.3, such assignment applies in the amount of Heraeus' co-ownership. The assigned claims serve as security in the same scope as the goods subject to reservation of title. If an assigned claim is included in a current account, the Customer hereby immediately assigns to Heraeus a balance which corresponds to such claim from current account. Heraeus hereby accepts the said assignment of claims.

8.6 The Customer shall have the right to collect, within his ordinary course of business, the claims assigned to him by Heraeus until revocation by Heraeus, which revocation may be declared at any time and for no specific reason; this collection right becomes automatically extinct without revocation as soon as the Customer defaults in any of his payments to Heraeus. If payment is made by direct debiting, the Customer will ensure by prior agreement with its bank that the amounts received are exempt from the bank's lien and that he is at all times able to meet his obligation to transfer his proceeds to Heraeus. At the request of Heraeus, the Customer will inform its own Customers of the assignment of future claims to Heraeus and provide Heraeus with any and all information and documentation which is required for the assertion of these claims.

8.7 If the aggregate value of the securities existing for Heraeus exceeds the claims of Heraeus by more than 10%, Heraeus will release additional securities of its own choice at the request of the Customer.

8.8 Above and beyond the foregoing, the Customer is not entitled to make any dispositions in respect of the goods subject to reservation of title (liens, pledging of security interests or other assignments in respect of the claims specified in Sec. 8. In the event of an attachment or seizure of the goods subject to reservation of title, the Customer will point out that these goods are the property of Heraeus and will notify Heraeus of such attachment or seizure without delay, also in writing.

8.9 If the Customer is in default of payment and a grace period fixed by Heraeus has elapsed without payment being effected, Heraeus is entitled to take back the goods subject to reservation of title also if Heraeus has not rescinded the contract.

## **9. Export**

9.1 In the event that the import or export of the products or the fulfillment of any of Heraeus' contractual obligations hereto, is directly or indirectly prevented, restricted or interfered with due to an export or import restriction, sanction, quota or prohibition, or failing to receive a necessary licence or consent ("**Export Restriction**"), Heraeus shall, without incurring any liability, be excused from such performance to the extent and for the duration of such prevention, restriction or interference.

9.2 An Export Restriction shall also be deemed to exist, if the fulfillment of Heraeus' contractual obligations is not legally prevented, restricted or interfered with, but Heraeus or an affiliated company of Heraeus may be subject to civil or criminal sanctions due to national or international regulations, in particular export control regulations or other sanctions.

9.3 If the Export Restriction prevents, restricts or interferes with the performance of Heraeus' contractual obligations for a continuous period of more than three months, each party is entitled to terminate the respective purchase order(s), without incurring any liability in this respect, by giving written notice to the other party.

9.4 Upon request of Heraeus, Customer shall provide Heraeus with all information concerning the final recipient, the final destination, the intended use of the products and, if required, an end-use certificate.

## **10. Choice of Law, Place of Performance, Place of Jurisdiction**

10.1 These Terms of Sale and any agreement between Heraeus and the Customer shall be governed by and construed in accordance with the law 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 of 11 April 1980 (CISG).

10.2 The place of performance for the Services of Heraeus and for the Customer's payments is Heraeus' registered place of business.

10.3 The place of jurisdiction, also for actions on cheques and bills of exchange, is the registered place of business of Heraeus. However, Heraeus shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Germany or under the laws of the country in which the Customer has his registered place of business.