Heraeus

TERMS AND CONDITIONS OF SALE /
"TERMS OF SALE"

1. General

1.1 The sales agreement consists of, in order of precedence: the Heraeus Precious Metals North America LLC (**"Heraeus"**) quotation, offer or order acknowledgement (typed portions control over pre-printed portions) (each, an **"Offer"**), the written specifications for the Goods (the "**Specifications**"), and these Terms and Conditions of Sale, also known as Terms of Sale (collectively, the **"Sales Agreement"**). Any additional or conflicting terms contained in Customer's purchase order, or other method of acceptance or order, constitutes a proposal to amend the Sales Agreement. The proposal will not govern unless expressly accepted in a signed writing by Heraeus. If the Sales Agreement is deemed an acceptance to Customer's offer, it is conditioned on Customer assent to the Sales Agreement.

2. Orders, Payment and Delivery

2.1 Sale of Goods. Customer agrees to purchase from Heraeus the goods, products and services described in the Offer (**"Goods"**).

2.2 Purchase Price, Payment Terms. Payment for the Goods is due and payable within 15 calendar days of invoice, unless the Offer describes a different time for payment. Unless otherwise stated, all prices are in U.S. dollars. Customer will pay Heraeus at the location and manner indicated in the Offer. Heraeus reserves the right to require Customer to prepay for all or part of the Goods. Heraeus reserves the right to adjust prices or assess surcharges on orders at any time due to any event, nature, or other occurrence beyond its reasonable control, including but not limited to: a Precious Metal Market Disruption, as described in Section 3.3 below; if Heraeus, its affiliates, or contractors incurs new, additional, or amended tariffs, duties, or other governmental charges after the date of the Offer in connection with (i) its performance, or (ii) the import or export of Goods or any components or inputs thereof, including, but not limited to, precious metals (each a "Charge Event"). Prices do not include applicable present or future federal, state and local taxes, or any other official or governmental levies, tariffs, duties, or tolls, of any kind. Customer is responsible for and must pay any such taxes, levies, tariffs, duties, and tolls, unless Customer provides a valid tax exemption certificate authorized by the applicable taxing authority. If Customer does not pay Heraeus on the applicable due date, Heraeus reserves the right to apply a finance charge to the outstanding balance of 1.5% per month, not to exceed the maximum amount of interest permitted by law. Customer may not set off any amounts due from Customer to Heraeus under the Sales Agreement against any other amounts which may be due from Heraeus to Customer.

2.3 Shipment and Delivery. All shipments are made FCA Heraeus's designated shipping point (Incoterms 2020), unless otherwise stated in the Offer. Heraeus will pack and ship the Goods in accordance with its then-current practices, unless Heraeus and Customer agree otherwise in writing. Customer will pay all transportation, shipping and handling charges for the Goods. Goods will be deemed delivered when they are (a) turned over to the carrier for shipment or (b) put into storage for the Customer's benefit, whichever occurs first. Heraeus will endeavor to meet all estimated delivery times; availability of Goods and delivery times are estimates, however, and not guaranteed. Heraeus is not and will not be liable for any loss, injury, damage or other expense that Customer or any other party may suffer if Goods are shipped after the estimated shipment date.

2.4 Performance and Delivery Delay. Without limiting any provision in the Sales Agreement, Heraeus's delivery of the Goods and performance under the Sales Agreement may be delayed and extended for a period equal to: the period required for issuance of required licensing and approvals by local, state and federal regulatory bodies; the period required for conversions of Heraeus's information technology systems; or such period of time that Heraeus's production plants, machinery, or facilities that are essential for producing the Goods are not in operation, including, without limitation, annual physical inventory, scheduled or unscheduled plant shutdown or maintenance, production changeover, information technology disruptions, legal holidays, and governmental inspection.

2.5 Acceptance. Unless specified elsewhere in the Sales Agreement, Goods will be deemed accepted upon delivery, unless Customer rejects the Goods within 2 business days of arrival at Customer's designated destination. Claims for shortages, damage, or visible defects in Goods must be made in writing within that time period.

2.6 Storage; Consignment. If Customer refuses or otherwise declines to accept delivery of Goods, Heraeus may, as Customer's agent and without liability to Heraeus, store or arrange for storage of such declined Goods at Customer's expense. Such Goods will be deemed delivered at the time they are either put into storage or turned over to the carrier for shipment, whichever occurs first. Any consignment arrangement must be specified in the Offer or in an addendum to the Sales Agreement.

2.7 Title. Title and risk of loss to the Goods will pass to Customer at the time Goods are delivered, or deemed delivered, to Customer pursuant to the shipping term under Section 2.3. Customer, however, grants to Heraeus a security interest in the Goods until payment in full and performance by Customer under the Sales Agreement. Heraeus may document this security interest in a security agreement and a UCC financing statement.

2.8 Additional Work/Customer Changes. Heraeus may perform additional work for Customer not covered in the Offer. Any additional work is subject to additional charges, which Heraeus will disclose to Customer in advance. Change requests by Customer after production of Goods has commenced, including, but not limited to changes in quantities of Goods ordered, changes in packaging agreed to by Heraeus and Customer in writing, changes in specifications of Goods, or changes in raw material components of Goods, may result in a

new price and a modification to the Offer.

3. Precious Metal Services; Available Precious Metal.

3.1 Specialized Terms and Conditions. Heraeus, itself or through affiliated entities or its contractors, may provide to Customer services involving precious metals. These services may include, as examples and without limitation: precious metal trading or purchase, reprocessing, recycling or refining services; Goods incorporating precious metals; precious metal leases; and precious metal pool account ("Pool Account") transaction services (collectively, **"Precious Metal Services"**). Precious Metal Services are unique and involve specialized terms and conditions that describe, among other things, how Heraeus and its affiliates or contractors value, store and transfer precious metals (**"Specialized Terms and Conditions"**). All Precious Metal Services are subject to Specialized Terms and Conditions. If Customer is entering into a transaction with Heraeus that will involve Specialized Terms and Conditions, Heraeus will provide the applicable Specialized Terms and Conditions to Customer and the applicable Specialized Terms and Conditions will be a part of the Sales Agreement.

3.2 Available Precious Metal. Customer is solely responsible for providing to Heraeus all precious metals necessary to manufacture the Goods at least four (4) weeks prior to the proposed shipment date described in the Offer, unless otherwise stated in the Offer. Such precious metals may be provided by: physical delivery to Heraeus, Customer's purchase of precious metal from Heraeus or its affiliates, pursuant to Specialized Terms and Conditions, which is made available at Heraeus's facility; or credit transferred from Customer's precious metal weight account at a third-party to Customer's Pool Account at Heraeus, subject to application of transfer fees. Heraeus is not obligated to manufacture or ship any precious metal-containing Good if Customer does not timely provide the necessary quantity of precious metal(s) to Heraeus. In the event Customer fails to timely provide the necessary quantity of precious metals, Heraeus may, in its sole discretion: (i) delay manufacture of the Good(s) until Customer provides the necessary quantity of precious metal; (ii) refuse to manufacture the Good(s); or (iii) commence production of the Goods with Heraeus's precious metal and assess Customer a lease fee, payable in accordance with the Sales Agreement, according to the following formula:

Precious Metal Price * Quantity * Rate * Days/360 wherein -

(1) "Precious Metal Price" - the Heraeus spot price in USD for the relevant precious metals.
(2) "Quantity" - the weight of the outstanding precious metals in ounces used for the Good(s) manufactured.
(3) "Rate" - the percentage determined by Heraeus in the amount of its current applicable market lease rate plus three (3) percentage points and specified in the applicable invoice, provided that the applicable market lease rate is determined on the business day immediately preceding the commencement of each monthly period.
(4) "Days" - the number of days between the date on which the precious metals should have been provided by the Customer and the date on which the precious metals finally provided by the Customer are booked on Customer's precious metal weight account at Heraeus (both days included).

3.3 Precious Metal Market Disruption. In the event of a disruption in the precious metal market for Pt, Ru, Ir, Rh, and/or Pd whereby there is at least a deviation of +/- 5% in the reference price(s) that is used in or designated by the Sales Agreement for such metal(s) (each a "Reference Price") between a given reference date and the prior published reference price, then, for the duration of the remainder of the quotational period, Heraeus and Customer will in good faith adjust such Reference Price to the then-current market spot price offered by Heraeus for such precious metal(s).

4. Warranty and Indemnity

4.1 Limited Warranty. Except as otherwise stated in the Offer or material safety data sheet for the Goods, Heraeus warrants that for a period of 30 days from the date of receipt by Customer, the Goods will substantially conform to the Specifications in all material respects. Customer must notify Heraeus in writing of any defects within 10 calendar days of the end of the warranty period. Customer may not make a claim against Heraeus or its suppliers based on any reasonable variation from the Specifications that do not adversely affect the general performance of the Goods. Heraeus is not responsible for performance figures given in any source other than the Specifications and the applicable material safety data sheet. This warranty only extends to Customer and may not be transferred to any other person.

4.2 Warranty Claims. As Customer's sole remedy, Heraeus will, at its option, replace or refund the price paid for any Goods that do not conform to the warranty under Section 4.1. Heraeus may require inspection of the defective or non-conforming Goods. Customer may not return any Goods to Heraeus unless such return is first authorized in writing by Heraeus.

4.3 Non-Defective Goods. Heraeus may require Customer to reimburse Heraeus for all reasonable Heraeus charges if Heraeus must examine or rework returned Goods that Heraeus determines comply with the warranty under Section 4.1.

4.4 Misuse of Goods. Heraeus disclaims liability that may arise: if the Customer or any third party modifies, misuses, improperly installs or repairs the Goods; if the Goods suffer an accident, neglect, or adverse conditions; or if the Goods are used contrary to the Specifications, material data safety sheet, or instructions of use. The warranty under Section 4.1 will terminate when Customer incorporates the Goods into Customer's products, even if the warranty has not expired, unless the Goods were verified to comply with the Specifications using tests or methods acceptable to Heraeus.

4.5 WARRANTY LIMITATIONS. THE WARRANTY UNDER SECTION 4.1 IS EXCLUSIVE AND MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED,

INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO MODIFICATION OR ALTERATION OF THE FOREGOING WARRANTY SHALL BE VALID OR ENFORCEABLE UNLESS SET FORTH IN A WRITTEN AGREEMENT SIGNED BY HERAEUS AND CUSTOMER.

4.6 Customer Indemnity. Customer will indemnify and hold harmless Heraeus, its affiliates and their respective officers, directors, employees and agents from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging (a) a breach by Customer of the Sales Agreement, or (b) personal injury or property damage arising from the use, operation, or failure to operate the Goods, except to the extent caused by the gross negligence or willful misconduct of Heraeus.

5. LIABILITY LIMITATION

5.1 IN NO EVENT SHALL HERAEUS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER SUCH DAMAGES ARE CLAIMED IN AN ACTION IN CONTRACT, TORT, STRICT LIABLITY OR OTHERWISE EVEN IF HERAEUS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HERAEUS'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALES AGREEMENT, INCLUDING WITHOUT LIMITATION UNDER THE INDEMNITY AND WARRANTY PROVISIONS, ON ACCOUNT OF ANY CLAIM OF ANY KIND, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE SUBJECT GOODS. NOTWITHSTANDING ANY PROVISION HEREIN, THE PURCHASE PRICE OF THE SUBJECT GOODS DOES NOT INCLUDE THE PRICE OF PRECIOUS METAL CONTAINED IN THE SUBJECT GOODS.

6. Termination, Damages and Remedies

6.1 Early Termination. If Customer terminates or cancels the Sales Agreement for any reason other than breach by Heraeus, at Heraeus's option, and in addition to all other remedies available at law or in equity: (a) Customer must accept delivery of and pay the purchase price for all Goods that are either finished or ready for shipping; and (b) Customer must reimburse Heraeus for (1) all actual costs incurred by Heraeus in connection with the uncompleted order as of receipt of notice of cancellation, and (2) all other costs, if any, including general, selling and administrative expenses and a reasonable profit on the terminated portion of the Sales Agreement.

6.2 Bankruptcy. If Customer dissolves, is voluntarily or involuntarily declared bankrupt, insolvent or subject to receivership, trustee or custodial administration, or assigns its assets for the benefits of its creditors, Heraeus may terminate this Agreement with written notice to Customer.

6.3 Offset. Heraeus may offset any claims, refunds or other damages due to Heraeus under the Sales Agreement against any discounts, refunds, rebates, warranty work or other amounts due to Customer from Heraeus.

7. Compliance

7.1 Compliance with Laws. With respect to all activities under the Sales Agreement, each of Heraeus and Customer shall comply with all applicable federal, state and local laws, government regulations and orders, including without limitation concerning: (a) delivery, use, or sale of the Goods; (b) occupational safety and health; (c) protection of persons and property from death, injury or damage; (d) labor and employment, including equal employment opportunity; (e) tax; (f) export control; (g) the environment and the use, handling, storage, labeling, and disposal of toxic or hazardous materials; and (h) money laundering, bribery, anti-terrorism, trade embargos, and economic sanctions.

7.2 Hazardous Goods. Customer acknowledges that there may be hazards associated with the storage, use and disposal of Goods. Customer agrees that only qualified and trained individuals who have been made aware of these potential hazards will handle the Goods. Customer also assumes all risk and liability resulting from its use or disposal of Goods.

7.3 Compliance Indemnification. Customer shall indemnify, defend and hold harmless Heraeus, its affiliates and their respective officers, directors, employees and agents from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging Customer's conduct which is in breach of the covenants under this Section 7.

8. Intellectual Property

8.1 New Intellectual Property. While manufacturing Goods, Heraeus may invent, develop or discover methods, techniques, processes, technology, know-how, formulas or software that have application in Heraeus's business generally and are not specific to Goods (**"Heraeus Developments"**). Heraeus Developments are and will be the sole and exclusive property of Heraeus.

8.2 No Reverse Engineering. In consideration of receipt of Goods, Customer covenants not to reverse engineer any Goods and not to assist any other party, including any affiliate of Customer, to reverse engineer any Goods.

9. Governing Law, Arbitration and Venue

9.1 Governing Law. The Sales Agreement will be construed in accordance with and governed solely by the laws of the State of Delaware, without regard to its conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) shall be excluded.

9.2 Arbitration. Heraeus and Customer will first endeavor to resolve through good faith negotiations any dispute arising

under or relating to the Sales Agreement. If a dispute cannot be resolved through good faith negotiations within a reasonable time, such dispute will be resolved by binding arbitration in New Castle County, Delaware, and administered by the American Arbitration Association (**"AAA"**). Any such arbitration must be conducted by a single arbitrator in accordance with the Commercial Arbitration Rules of the AAA, including the Optional Rules for Emergency Measures of Protection, in effect at the time the arbitration is commenced (except as modified in the Sales Agreement). Any arbitration award must be issued within one year from the date claimant files its notice of intention to arbitrate (i.e. the demand), and the arbitrator must agree to comply with this schedule before accepting appointment. Any evidentiary hearing must be held on consecutive hearing days. Any monetary award in the arbitration must include pre-award interest at the rate of 1.5% per month from the time of the acts giving rise to the award. Judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction.

10. Force Majeure.

If Heraeus's or any of its sub-contractor's or supplier's ability to perform its obligations under the Sales Agreement is limited, delayed or prevented in whole or in part by any reason whatsoever not reasonably within the control of Heraeus, its sub-contractor's, or its suppliers, including, but not limited to, act of God, disease or medical epidemic or outbreak, war, invasion, act of foreign enemy, hostilities, civil war, rebellion, civil strife, strikes or industrial dispute, insolvency or bankruptcy of a supplier, or by any law, rule, regulation, order or other action by any public authority, supply chain or transportation delays or the refusal of any necessary license, then Heraeus will be excused, discharged, and released from performance to the extent such performance is so limited, delayed or prevented, without liability of any kind. An event of force majeure will also be deemed to exist if Heraeus can prove (a) that Heraeus production plants that are essential for production of the Goods become partly or fully inoperative due to reasons that could not be foreseen by Heraeus; (b) that production plants are permanently or temporarily inoperable due to the incorrect specifications supplied by Customer; (c) that there is a shortage of raw materials, precious metals, equipment, fuel, or other components necessary to manufacture the Goods or such materials are otherwise not commercially available in quantities or at such times as are necessary to produce the Goods; and/or (d) a Charge Event occurred.

11. Notices

11.1 Unless otherwise noted, all notices or correspondence pursuant to the Sales Agreement must be sent (or faxed with a follow up copy sent) to the address or number and to the contact on the Offer or to such other address as may be designated by Heraeus.

12. Severability

12.1 If any provision of the Sales Agreement is prohibited by law, or held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

13. Waiver

13.1 No failure by Heraeus or Customer to enforce or take advantage of any provision under this Sales Agreement will constitute a waiver of the right subsequently to enforce or take advantage of such provision.

14. Miscellaneous

14.1 Headings. The headings contained in the Sales Agreement are for reference only and are not to be construed to affect construction or interpretation of the Sales Agreement.

14.2 Entire Agreement. The Sales Agreement, and the documents referenced in the Sales Agreement, including any Specifications, constitute the entire understanding and agreement between Heraeus and Customer, and supersede all prior oral or written negotiations and agreements with respect to the subject matter of the Sales Agreement. Conflicts in terms will be resolved in the following order of precedence: (a) customized terms of the Offer; (b) the Sales Agreement; and (c) any written agreement signed by authorized representatives of Heraeus and Customer expressly amending the Sales Agreement. No modification, change or amendment of the Sales Agreement will be valid unless made in writing and signed on behalf of Heraeus and Customer by its duly authorized officer or representative.

14.3 No Third-Party Beneficiaries; Assignment. The Sales Agreement is entered into solely for the benefit of Heraeus and Customer, and no other person will acquire the right to enforce any provision of the Sales Agreement against either party. Neither Heraeus nor Customer may assign the Sales Agreement to a third party without the prior written consent of the other party except, with prior notice: (a) to an affiliate; or (b) to a third party who will acquire, by sale of assets, merger or otherwise, all or substantially all of the assets of such party. The assigning party will remain obligated to perform under the Sales Agreement notwithstanding such assignment.

14.4 Survival. All provisions that are continuing in nature, including but not limited to those involving indemnity, will survive termination of the Sales Agreement.

14.5 Remedies. Heraeus's rights and remedies are cumulative and in addition to any other rights and remedies provided by law or equity (or provided under the Uniform Commercial Code except to the extent modified herein).

14.6 No Partnership. Nothing in this Sales Agreement may be construed to create a partnership, joint venture or agency relationship between Heraeus and Customer.