Heraeus

Terms of Sale

1. Scope of Application

All sales and services (hereinafter collectively the “Services”) of Heraeus Electro-Nite France SARL. and its affiliated companies domiciled in France (“Heraeus”) to a professional buyer acting within the scope of its business activities (hereinafter referred to as the “Customer”) are exclusively subject to the following General Terms of Sale and Delivery (hereinafter referred to as the “Conditions”). Any order placed with Heraeus entails the Customer’s unreserved acceptance of the entirety of these Conditions, from which no derogation shall be permitted in any way – except by prior express written agreement of Heraeus – and of which the Customer acknowledges having taken cognizance prior to placing its order.

Consequently, and in accordance with the provisions of Article L441-1 of the Code de commerce, these Conditions shall prevail over all other general or specific purchasing conditions, unless otherwise agreed in writing by Heraeus. They form an integral part of Heraeus’ quotations and the Customer’s orders.

In the case of a continuing business relationship between Heraeus and the Customer, these Conditions shall apply to all future orders and transactions of the Customer, without it being necessary for Heraeus to attach or expressly refer to them for each individual order, provided that these Conditions have been communicated to the Customer in accordance with Article L441-1 of the Code de commerce.

Any tolerance regarding the application of the terms of these Conditions shall never, regardless of its duration or frequency, be construed as a waiver of the right to subsequently invoke any of the said provisions.

2. Subject Matter and Scope of Services (Offers, Samples, Guarantees, Conclusion of Contracts)

2.1 Prior to placing an order, the Customer may review the essential characteristics of the products and services it wishes to order by consulting the pre-contractual information communicated by Heraeus, including by means of the website https://www.heraeus.com, the catalogue (paper or electronic) or any other commercial documentation (commercial offer and its appendices, brochures, paper or electronic advertising materials, etc.).

2.2 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, effected delivery of the goods ordered or performed the Service.

Heraeus shall be generally under no obligation to verify the correctness of the information provided by the Customer upon which Heraeus’ offer or order confirmation is based, and Heraeus shall also not be obligated to investigate if the execution of the Customer’s order based on such information infringes any third-party property rights. The Customer is aware of all risks that occur when placing the order.

2.3 The data and information included in data sheets, brochures and other promotional and information material of Heraeus serve solely as a guideline and become a binding part of a contract only upon the express written consent of Heraeus.

2.4 Characteristics and properties of samples and specimens are only binding if expressly so agreed in writing.

2.5 Information about the quality, condition and (shelf-) life of products shall be deemed to be guaranties only if expressly designated as such. The same applies to the assumption of a procurement risk.

2.6 Unless otherwise agreed in writing, Heraeus will deliver products within the tolerances admissible under the relevant European technical standards.

2.7 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 according to the customs of the sector.

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

3.1 The type and scope of Heraeus’ Services and the delivery periods are determined by the written order confirmation of Heraeus. Heraeus shall be entitled to the partial performance of Services if this is reasonable according to the customs of the sector.

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 The products of Heraeus are properly packaged, taking into account the customs of the sector. If the Customer desires special packaging as carts, cases or pallets, the costs will be borne by the Customer.

3.4 Heraeus delivers ‘ex factory’/’ex works’ (Incoterms 2020). If Heraeus solely organizes the transport, the costs of dispatch and the costs of transport insurance will be borne by the Customer.

3.5 The risk of accidental loss or accidental deterioration of the products shall pass to the Customer at that point in time at which the products are placed at the Customer’s disposal at the factory/works from which delivery is effected, even if Heraeus has accepted to perform additional services such as loading or transportation of the products.

3.6 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. The additional costs of this insurance will be borne by the Customer.

3.7 The Customer shall ensure proper receipt of the delivered products. Such receipt shall be evidenced by the signature of the transport document. Under no circumstances shall Heraeus be liable in the event of the carrier’s inability to deliver the goods. The Customer shall make arrangements to receive the products on time and in suitable storage locations. The Customer shall also verify the condition of the products delivered and that the quantities are correct. No complaint shall be taken into account if made more than three (3) clear days from the delivery of the products.

4. Prices, Payment, Default

4.1 The prices quoted by Heraeus are exclusive of the statutory value-added tax, shipping charges and insurance costs (‘ex works’, Incoterms 2020). They are payable by cheque or bank transfer.

4.2 Prices indicated in foreign currency are calculated at the rate of the date of the offer. However, Heraeus reserves the right to adjust prices, even after the order is placed, when this exchange rate has changed.

4.3 Invoices are electronic and payable within 30 days of the invoice date. In the absence of full payment of the invoice within the aforementioned period, the Customer is legally and without any notice of default being required to pay:

– a fixed compensation of forty (40) euros for recovery costs in accordance with the provisions of Articles L441-10 and D441-5 of the Code de commerce. By express agreement, additional

compensation may be claimed, upon presentation of supporting documents, when the recovery costs incurred by Heraeus (including proceedings and fees) exceed the amount of the fixed compensation,

- a compensation of 15 euros for any order of an amount less than 125 euros for management costs,
- the immediate due date of the entire debt and interest of 1% per month, which shall not be less than the ECB refinancing rate + 10 points, in accordance with the terms of Article L441-10 of the Code de commerce,
- the suspension by Heraeus of the manufacture, delivery or distribution of any other pending order of the Customer,
- all without prejudice to any other rights and remedies of Heraeus against the Customer.
- Subject to the sending of a prior formal notice, Heraeus may claim a fixed compensation of 10% of the outstanding balance, with a minimum of 100.00 euros, as compensation for contractual non-performance.

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.

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

4.5 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.

If, despite a reasonable time limit, a Service which is ready for delivery 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.

5. Warranty, Liability

5.1 Heraeus warrants instrumentation products for a period of twelve months from the date of delivery. Consumable materials have a limited lifespan and by their nature cannot be warranted for one year.

The warranty offered by Heraeus covers only hidden defects: non-conformity of the products with the order and any hidden defect arising from a defect in material, design or manufacture affecting the products delivered and rendering them unfit for use. As Customers are professionals, a hidden defect is understood as a defect in the manufacture of the product rendering it unfit for its intended use and which could not have been detected by the buyer prior to its use. A design defect is not a hidden defect and Customers are deemed to have received all technical information relating to the products.

Under these conditions, Heraeus' obligation to perform the contract shall, at its discretion, consist of subsequent performance by remedy of the defect or delivery of a fault-free product, such warranty also covering labor costs.

When repair is carried out at the Customer's premises, travel and accommodation costs shall be paid by the Customer at the prevailing rates.

Transport costs for the return of the product to be repaired shall be borne by the Customer. The return transport of the replaced or repaired product shall be borne by Heraeus.

When a product is composed of elements from several suppliers, the warranty conditions of those suppliers shall apply: in such case, the warranty granted by Heraeus is limited to the parts manufactured by Heraeus.

Complaints regarding defects existing at the time of delivery, and revealed after receipt of the products, shall be made by the Customer in writing within three (3) days following the date on which the Customer discovered the defect. The burden of proving the date of such discovery lies with the Customer.

5.2 Slight deviations from the agreed or standard quality do not constitute a defect in a product or Service. General information on the use of a product or examples for the application of a product given by Heraeus in product brochures or other advertising media do not release the Customer from a careful inspection of the delivered product for its fitness for the Customer's particular purpose of use. The Customer's special requests regarding the particular use of a product shall only be authoritative if Heraeus has confirmed to the Customer in writing at the time of conclusion of the contract that the product delivered is fit for the Customer's intended purpose of use.

5.3 The Customer shall notify Heraeus without delay of all claims for defects which are asserted by his 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. 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.

5.4 In the event of a warranty claim, 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 is unreasonable or not possible and the defect complained of is not merely a minor defect. Claims for damages are governed by the provisions in clause 5.6 hereof.

5.5 The warranty and the compensation of any loss or damage is excluded if and to the extent that such loss or damage is caused by abnormal storage and/or preservation conditions at the Customer's premises, by the improper use, modification, assembly, installation and/or operation of the products of Heraeus, or by defective instructions of the Customer, and not by a fault on the part of Heraeus. The warranty for hidden defects shall be excluded if the Customer operates in the same field of specialization as Heraeus. The liability of Heraeus for defects in materials which are supplied by the Customer and processed by Heraeus is excluded if such defects are caused by the characteristics and properties of the materials so supplied. If defects in the materials supplied by the Customer should render these materials unusable during their processing by Heraeus, the Customer will nevertheless be obligated to reimburse Heraeus for its processing expenditure.

5.6 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 Articles 1245 et seq. of the Code civil on liability for defective products, 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 hidden defects become barred by the statute of limitations after twelve (12) months from the passing of the risk.

5.7 Heraeus will assume unlimited liability in cases where 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 Articles 1245 et seq. of the Code civil on liability for defective products, 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 direct damage 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.

5.8 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.

6. RESERVATION OF TITLE

6.1 Heraeus retains title to all products delivered until the Customer has fully satisfied all of his payment obligations from the business relationship with Heraeus in accordance with Law No. 80-335 of 12.05.1980 and Articles L 621-122 to L 621-124 of the Code de Commerce.

6.2 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. A resale of the goods subject to reservation of title within the meaning herein defined extends also to the installation of such goods in ground and buildings, or their installation in facilities connected to buildings, or their use for the performance of other contracts.

The authorization to resell shall be automatically withdrawn in the event of receivership or judicial liquidation.

6.3 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.

Products held in stock by the Customer are presumed to be those that remain unpaid.

6.4 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 clause 6.2, 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.

6.5 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 his 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 his 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.

6.6 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.

6.7 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 clauses 6.4 and 6.5). 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.

6.8 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.

7. Force Majeure

7.1 If any performance of a Service by either party is prevented, restricted or interfered with by reason of any cause not within the reasonable control of the respective party (herein together "Force Majeure Event"), the party so affected shall be excused from such performance 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 subcontract its services to a third party.

a) By way of example only, but without limitation, the following shall be considered as Force Majeure Events: Acts of God, acts or omissions of any governmental rules, regulations or orders of any governmental authority or any officer (e.g. lack of notification), department, agency or instrumentality thereof, acts of government, flood, storm, earthquake, fire, production stoppages due to unforeseen breakdowns, lack of motive power or raw materials resulting from an electrical cause, war, explosion or industrial accident, riot, insurrection, acts of the public enemy, sabotage, invasion, contagious disease, including, without limitation the coronavirus 2019-nCoV, epidemics or quarantine restrictions, including, without limitation epidemic or pandemic border closures, reinforced border controls and curfews, strikes, lockouts or differences with workmen without the need to determine by whose action, employers or workers, the movement originated, and embargoes if caused by an event outside of the reasonable control of the respective party.

b) The events referred to in the preceding paragraph shall also be deemed Force Majeure Events when they occur at the premises of a supplier of raw materials essential for the manufacture of the goods ordered, or at any other establishment on which the performance of the contract depends – and particularly transport – provided that proof is furnished in both cases that the business concerned was actually halted by the events in question.

c) No Force Majeure can be invoked for the obligation of the Customer to pay in due time.

7.2 The affected party shall notify the other party as to the nature and probable duration of the Force Majeure Event.

7.3 Each party will exercise reasonable commercial efforts to resolve any Force Majeure Event as promptly as practicable, provided, however, that neither Party shall be obligated to incur additional costs of more than 10% of the purchase price of the affected contract.

7.4 If the Force Majeure Event continues for an uninterrupted period of one hundred and eighty (180) days, the other party may terminate any affected single contract concluded hereunder by giving written notice of termination to the other party, provided the Force Majeure Event is still in effect at the time of giving written notice of termination to the other party. Neither party may then claim any damages.

8. Export

8.1 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.

8.2 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.

8.3 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.

8.4 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.

9. Severability

Each provision of these General Terms of Sale shall be interpreted in such a manner as to be effective and valid under the applicable law. However, if one or more provisions of these general terms and conditions should be declared void or become unenforceable due to a change in law or for any other reason, such provision shall be deemed severable and this will not affect the legality, validity and enforceable nature of the other provisions of the relevant article of the Conditions and the Conditions as a whole. Heraeus and the Customer undertake to replace the invalid provisions, to the extent that this is still legally possible, by a new provision that corresponds to the objectives of the Conditions.

10. Personal Data

We process personal data in accordance with the relevant data protection regulations. Our privacy policy can be viewed, downloaded, and printed at www.heraeus.com/privacy.

11. Choice of Law, Place of Performance, Place of Jurisdiction

11.1 These General Terms of Sale and any agreement between Heraeus and the Customer shall be governed by and construed in accordance with the law of France, 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).

11.2 The place of performance for the Services of Heraeus is the factory/works from which delivery is effected; the place of performance for the Customer's payments is Heraeus' registered place of business.

11.3 In the event of a dispute, the Customer shall first contact the Heraeus Customer Service to attempt to find an amicable solution. All complaints relating to the order placed or the performance of the service shall be made by registered letter with acknowledgement of receipt addressed to HERAEUS ELECTRO-NITE France at the following address: Lieudit Beau Vallon 57970 ILLANGE.

11.4 ANY DISPUTE REGARDING THE APPLICATION OF THESE CONDITIONS AND THEIR VALIDITY, INTERPRETATION OR PERFORMANCE SHALL, IN THE ABSENCE OF AN AMICABLE AGREEMENT, FALL UNDER THE EXCLUSIVE JURISDICTION OF THE TRIBUNAL JUDICIAIRE DE THIONVILLE, regardless of the place of the order, delivery, and payment and the method of payment, and even in the event of a warranty claim or plurality of defendants.

Furthermore, in the event of legal proceedings or any other action for debt recovery by the supplier, the costs of summons, court costs, as well as attorney and bailiff fees, and all ancillary costs shall be borne by the Customer at fault, as well as costs related to or arising from the Customer's non-compliance with the payment or delivery conditions of the order in question.