1 Scope
All purchase orders (deliveries of goods and provision of services) of Heraeus Holding GmbH and of the companies affiliated to it domiciled in Germany ("Heraeus") are subject to the following General Terms of Purchase ("GTP") only. These GTP apply also to future purchase orders of Heraeus. Heraeus objects to general terms and conditions of the supplier which deviate from these GTP or the provisions of law as well as to any supplementary provisions in the terms and conditions of the supplier, except where Heraeus gives its express prior written consent to the applicability of the supplier's general terms and conditions. The supplier’s general terms and conditions will also not become part of a contract between Heraeus and the supplier even if Heraeus, although being aware of the supplier's deviating or contradicting terms and conditions, takes delivery of goods, accepts services or effects payment for such deliveries or services.

2 Offer and Formation of a Contract
2.1 All orders, agreements and changes shall be binding only if placed or confirmed by Heraeus in writing. All correspondence must be exchanged with the purchasing department of Heraeus.
2.2 Orders placed by Heraeus without a time limit for acceptance may be accepted by the supplier only within fourteen (14) days from the order date.
2.3 Quotations are binding and non-refundable unless otherwise expressly agreed in writing.
2.4 In case of any deviation or variance between the supplier's order confirmation and Heraeus' purchase order, a contract shall be formed only if the supplier has expressly advised Heraeus of the deviation and Heraeus has agreed to such deviation in writing.

3 Examination and Procurement Duties
3.1 Waiver of inspection of a delivery on the basis of its general or special professional knowledge, the supplier shall examine all drawings, calculations, specifications and other terms of reference provided by Heraeus for errors and inconsistencies on its own initiative and shall report to and clarify with Heraeus all concerns or objections, if any, promptly in writing.
3.2 The supplier bears the procurement risk of the goods.

4 Delivery; Supplier’s Liens; Security in the Supply Chain
4.1 The period of delivery/performance specified by Heraeus in the purchase order is binding. If the purchase order does not specify such period, delivery of the goods or the performance of the service, respectively, shall be effected within fourteen (14) days after the date of the purchase order.
4.2 If the supplier is unable to comply with the binding period of delivery/performance, set forth in clause 4.1, the supplier shall notify Heraeus promptly and advise a practicable date for the delivery/performance. In addition, the supplier is committed to notify Heraeus without request of any difficulties in delivery/performance which may arise, for any reason whatsoever, immediately after such difficulties have come to the supplier's knowledge.
4.3 The supplier is obligated to strictly comply with all instructions and requirements of Heraeus as regards mode of transport, forwarding agent, and shipping instructions.
4.4 All deliveries and services shall be effected DDP “Point of Use” (Incoterms 2010). If delivery is made to construction sites or directly to third parties, unless otherwise agreed in writing, the supplier shall bear all cost and risk of the supplier which deviate from the shipping instructions.
4.5 Partial deliveries are permissible only with the express written consent of Heraeus, which consent shall not be unreasonably withheld.
4.6 The supplier is committed to attach to each shipment a delivery note exactly specifying the contents of the shipment, the net weight per item, and the complete SAP purchase order number of Heraeus.
4.7 The unconditional acceptance by Heraeus of a late delivery or late performance in the terms and conditions of the supplier, except where Heraeus gives its express prior written consent to the applicability of the supplier’s general terms and conditions, the supplier’s general terms and conditions will also not become part of a contract between Heraeus and the supplier even if Heraeus, although being aware of the supplier's deviating or contradicting terms and conditions, takes delivery of goods, accepts services or effects payment for such deliveries or services.
4.8 With regard to quantities, weights and dimensions, the figures determined by Heraeus during its incoming inspection shall be controlling, unless otherwise evidenced by the supplier.
4.9 The supplier shall provide reasonable assistance to Heraeus in obtaining proof of compliance with the requirements hereinafter. Heraeus may in this connection also request copies of documents or other evidence from the supplier, which the supplier shall furnish within a reasonable period of time.
4.10 If no payment instruments, shipping documents, certificates of origin or sales tax vouchers are missing, improper or incorrect, Heraeus reserves the right to refuse acceptance of the goods at the supplier's cost and risk.
4.11 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges, unless otherwise agreed.
4.12 Any contractual liens and reservations of title by the supplier are subject to a separate written agreement between Heraeus and the supplier.

4.13 The supplier shall give all organizational instructions and take all organizational measures, in particular in the areas of property protection, security of business partners, personnel and information, as well as in the areas of information and data transmission, to ensure the security of the entire supply chain, for example by adopting the requirements of internationally accepted initiatives on the basis of the WCO SAFE Framework of Standards (especially AEO). The supplier shall protect its deliveries of goods to and the performance of its services for Heraeus against unauthorized access and manipulation and shall have such deliveries and services performed by reliable third parties. The supplier shall ensure in any subcontract to Heraeus, if any, that a corresponding instruction is given by it to corresponding instructions and to corresponding measures.

4.14 The supplier represents and warrants that the goods do not contain any substances which are restricted by Directive 2011/65/EU (RoHS), as the substances which are contained in the goods and its use(s) are either already registered or not subject to registration in accordance with the Regulation (EC) No. 1907/2006 (REACH) and, if necessary, that an authorization in accordance with the REACH Regulation has been granted. The supplier shall prepare the safety data sheet pursuant to Annex II of the REACH Regulation, if required, and provide them to Heraeus. If the goods delivered are to be classified as dangerous goods within the meaning of the applicable international rules, standards and guidelines, the supplier must notify Heraeus thereof no later than on the date of the order confirmation.

4.15 Heraeus retains title to, and ownership of, any and all items, such as substances, tools, materials and other items, which are provided by it to the supplier for manufacturing purposes. As long as they are not processed, any such items must be stored separately and insured at replacement value amounting to their value at the last delivery date and their cost at the time of delivery. The supplier shall bear all costs of such storage and insurance.

4.16 Title to, and ownership of, the goods shall be transferred to Heraeus unconditionally and regardless as to whether the purchase price has been paid. If, in the individual case, Heraeus accepts an offer from the supplier for the transfer of ownership of goods which is conditional upon payment of the purchase price, the supplier's reservation of title shall lapse upon payment of the purchase price of the goods at the latest. In such case, Heraeus is authorized to sell the goods in the ordinary course of business also prior to the payment of the purchase price on the condition that Heraeus assigns to the supplier in advance the purchase price claims arising from such resale (application of the simple reservation of title extended to resale). In any case, all other forms of reservation of title are excluded, in particular the expanded and the assigned reservation of title, as well as the reservation of title extended to further processing.

5 Force Majeure
Acts of God, labor disputes, operational breakdowns through no fault or negligence of Heraeus, civil disturbances, acts by any governmental authority and other events or circumstances beyond Heraeus’ control will entitle Heraeus - notwithstanding any other rights or remedies available to it - to rescind the contract in whole or in part if such circumstances or events continue for a significant period of time and result in a substantial decrease in Heraeus' demand.

6 Contractual Penalties
6.1 In the event that the supplier defaults in the timely performance of its duty to deliver/provide a service, Heraeus may claim a contractual penalty at the rate of 0.5 % of the aggregate order value for each commenced calendar week of the supplier's default, but no more than 5 % of the aggregate order value. This shall not apply if the supplier furnishes valid proof that the default was caused by reasons beyond the supplier's control.
6.2 The contractual penalty pursuant to clause 6.1 shall be incurred as soon as the supplier defaults in delivery. The contractual penalty is immediately due for payment.
6.3 Heraeus may assert the contractual penalty in addition to its claim for performance of the supplier's duty to deliver. If Heraeus accepts the supplier's delivery or performance, Heraeus may claim the contractual penalty as has not expressly reserved this right at the time of receipt of delivery. Heraeus shall declare the reservation of its right to assert the contractual penalty no later than at the time of its final payment of the delivery concerned. This declaration may be given on a printed form.
6.4 The assertion of any further damage by Heraeus shall not be excluded, in particular the contractual penalty pursuant to clause 6.1 shall be set off against any such further damage.

7 Claims for Defects; Recourse and Product Liability; Insurance
7.1 The supplier is responsible for the perfect condition of the goods delivered and the services provided and for the existence of warranted characteristics. The supplier is in particular responsible for the conformance of the goods and services to the state of the art, to the generally accepted technical and occupational health and safety regulations of public authorities and trade associations, and for the compliance of the goods and services with all applicable laws.
7.2 Heraeus' duty to examine and give notice of defects shall be subject to the statutory provisions (Sections 377, 381 of the German Commercial Code (HGB)) with the following proviso: Heraeus' duty to examine is limited to defective goods or services as a result of a technical problem, including the shipping documents, during the incoming inspection and to defects which become apparent during quality control by way of random sampling (such as damage to the goods during transport, wrong delivery and short delivery, for example). The duty to examine shall not apply if acceptance shall be subject to the regular statutory limitation periods (Sections 195, 199 of the German Civil Code (BGB)), unless the application of the statutory limitation periods is precluded by law. In derogation of Section 438, Subsection 1, the supplier shall not be obligated to examine the goods if and to the extent that such claims are attributable to a defect in the goods delivered/manufactured or the services provided by the supplier, the burden of proof shall rest on the supplier. The supplier shall refund also any and all necessary costs and expenses in accordance with Sections 683, 670 of the German Civil Code (BGB) to the extent of the supplier's indemnity obligation, including the costs of bringing an action or the costs generated by a product recall. Heraeus will inform the supplier of the scope and content of such product recall to the extent practicable and reasonable.

7.8 The supplier is obligated to take out and maintain a product liability insurance covering all foreseeable damage and to furnish proof of the existence of such insurance to Heraeus upon request.

7.9 The mutual claims of the contracting parties against each other become extinguished within a reasonable time period fixed by Heraeus without having the right to refuse such subsequent performance. Heraeus is entitled to itself remedy, or cause to be remedied by any third party, the defect at the cost of the supplier and to claim from the supplier an advance payment of the costs thereby incurred.

7.10 The statutory limitation periods governing the sale of goods, including the shipping documents, during the incoming inspection and to defects which become apparent during quality control by way of random sampling (such as damage to the goods during transport, wrong delivery and short delivery, for example). The duty to examine shall not apply if acceptance shall be subject to the regular statutory limitation periods (Sections 195, 199 of the German Civil Code (BGB)), unless the application of the statutory limitation periods is precluded by law. In derogation of Section 438, Subsection 1, the supplier shall not be obligated to examine the goods if and to the extent that such claims are attributable to a defect in the goods delivered/manufactured or the services provided by the supplier, the burden of proof shall rest on the supplier. The supplier shall refund also any and all necessary costs and expenses in accordance with Sections 683, 670 of the German Civil Code (BGB) to the extent of the supplier's indemnity obligation, including the costs of bringing an action or the costs generated by a product recall. Heraeus will inform the supplier of the scope and content of such product recall to the extent practicable and reasonable.

8 Infringement of Third Party Property Rights

8.1 The supplier warrants that no patent rights or other intellectual property rights of any third party are infringed by or in connection with the supplier's delivery of goods or provision of services, and the supplier will, upon first written request, indemnify and hold Heraeus harmless from and against any and all claims which are asserted or entered against Heraeus by any third party on account of the infringement of a patent or other property right. The supplier will reimburse Heraeus for all necessary costs and expenses arising to Heraeus out of or in connection with such third party claims. Irrespective of the foregoing, Heraeus shall be entitled to enter with any third party into agreements with regard to the infringement of any intellectual property rights, especially compromise settlement agreements, also without the consent of the supplier.

9 Prices and Terms of Payment

9.1 The prices specified in the purchase orders are binding. These prices include any and all services and ancillary services provided by the supplier (such as mounting and installation, for example) as well as all ancillary costs (such as packaging, transport and transport and liability insurance). The supplier shall take back packaging materials at the request of Heraeus.

9.2 All invoices must specify the SAP purchase order number of Heraeus, the descriptors for the goods delivered or services provided, and the price per unit or quantity. All invoices must be sent to the address specified in the purchase order.

9.3 Unless otherwise agreed between the parties, the agreed prices become due and payable within sixty (60) calendar days after full performance of the delivery and/or service (as well as acceptance, if applicable) and receipt of a proper invoice. If the invoice is paid within fourteen (14) calendar days, the supplier shall grant a 2% discount on the net invoice amount.

9.4 There shall be no interest payable from the due date unless Heraeus is in default. The rate of interest for default is 5 percentage points p.a. above the base rate pursuant to Section 247 of the German Civil Code (BGB). The commencement of default in payment is generally governed by the statutory provisions. However, a written reminder for payment from the supplier is required in each such case.

9.5 Rights of setoff and rights of retention as well as the defense of non-performance of the contract shall be due to Heraeus within the statutory scope. In particular, Heraeus is entitled to withhold payments due for so long as Heraeus has claims against the supplier from incomplete or defective deliveries and/or services.

10 Industrial Property Rights and Know-How

10.1 All right, title and interest in and to any models, samples, drawings, software, documentation and other representations of all right, title and interest in and to any materials, tools, production and testing equipment and know-how disclosed or released by Heraeus to the supplier shall remain vested solely in Heraeus. Any such items, information and documents must be treated as confidential and may not be transmitted to any third party.

10.2 Any technical know-how which does not belong to the state of the art. At the request of Heraeus, the supplier will exploit inventions which are made by its employees. The supplier agrees and undertakes to notify Heraeus in writing of any such new technical know-how or employee invention within a period of six (6) weeks. The costs incurred in accordance with the (German) Employees Invention Act will be borne by Heraeus.

11 Heraeus Code of Conduct

11.1 The supplier hereby commits to Heraeus to comply with all legally binding rules and regulations, in particular with all applicable laws for the protection of fair competition, all export and import prohibitions in force, all applicable customs and tax regulations as well as all applicable legal regulations, in particular all relevant laws and regulations protecting the environment, and to not to offer, promise, or grant any benefits to employees of Heraeus as consideration for the preferential treatment in the procurement of products or services ("bribery"), to ban forced and child labor, and to ensure for its own staff a fair pay, appropriate working hours, safety at work and a non-discriminating working environment.

11.2 Heraeus may terminate the contract with the supplier without notice in the event that the supplier commits a breach of its obligations set forth in the foregoing paragraphs and/or supplies a contract-related item for which no contract is made, or if does not pay the purchase price within the due period. If the supplier has not paid the purchase price within the due period, Heraeus is entitled to sell the goods to third parties and to sell the goods at public auction, to use its remedies under the law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).

12 Miscellaneous

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

12.2 These General Terms of Purchase and any agreement between Heraeus and the supplier shall be governed by and construed in accordance with the law of the Federal Republic 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 (CISG).

12.3 The place of jurisdiction, also for actions on checks and bills of exchange, shall be the domicile of Heraeus. However, Heraeus shall be entitled to rescure 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 supplier has its registered place of business.