

## HERAEUS TERMS AND CONDITIONS OF SALE

### 1. General

**1.1** The sales agreement consists of, in order of precedence: the Heraeus Sensor Technology (a division of Heraeus Precious Metals North America Daychem LLC) (“**Heraeus**”) quotation, offer or order acknowledgement (typed portions control over pre-printed portions) (each, an “**Offer**”), the Product Specifications, and these Terms and Conditions (collectively, the “**Sales Agreement**”). Any 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 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.** Prices and time of payment for the Goods are as described in the Offer. 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. Prices do not include applicable federal, state and local taxes of any kind. Customer must pay any such taxes, 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.** 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. Delivery may be subject to issuance of required licensing and approvals by local, state and federal regulatory bodies.

**2.4 Acceptance.** Goods will be deemed accepted upon delivery unless Customer rejects the Goods within 48 hours of arrival at Customer’s designated destination. Claims for shortages, damage, or visible defects must be made in writing within that time period.

**2.5 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.

**2.6 Title.** Title and risk of loss to the Goods will pass to Customer at the time Goods are delivered to Customer. 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.

**2.7 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 after production of Goods has commenced may result in a new price and new Offer.

### 3. Warranty and Indemnity

**3.1 Limited Warranty.** Heraeus warrants that for a period of 90 days from the date of receipt by Customer, the Goods (a) will substantially conform to the specifications provided to Customer, subject to reasonable variations plus or minus, and (b) will be free from defects in materials, design and workmanship. Customer must notify Heraeus in writing of any defects within 20 days of the end of the warranty period. Customer may not make a claim against Heraeus or its suppliers based on any reasonable variation in the specification of the Goods 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. This warranty only extends to Customer.

**3.2 Warranty Claims.** Heraeus will, at its option, replace or refund the price paid for any Goods that do not conform to the warranty under Section 3.1. 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.

**3.3 Non-Defective Goods.** Heraeus may require Customer to reimburse Heraeus for all reasonable Heraeus charges if Heraeus is required to examine or rework returned

Goods that are determined by Heraeus to comply with the warranty under Section 3.1.

**3.4 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 published specifications or instructions of use. The warranty under Section 3.1 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 specifications using tests or methods acceptable to Heraeus.

**3.5 WARRANTY LIMITATIONS.** THE WARRANTY UNDER SECTION 3.1 IS EXCLUSIVE AND MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING 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.

**3.6 Customer Indemnity.** Customer shall 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.

## 4. LIABILITY LIMITATION

**4.1** IN NO EVENT SHALL HERAEUS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, REVENUE, OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, OR TORT, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HERAEUS'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALES AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE GOODS.

## 5. Termination, Damages and Remedies

**5.1 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 contract 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, cancellation charges incurred by Heraeus and a reasonable profit on the terminated portion of the Sales Agreement.

**5.2 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.

**5.3 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.

## 6. Compliance; Insurance

**6.1 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.

**6.2 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.

**6.3 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 6.

## 7. Intellectual Property

**7.1 Definition.** "Intellectual Property" as used in the Sales Agreement means: (a) patents, patent applications, continuations, continuation-in-part, divisions, reissues, patent disclosures, inventions (whether or not patentable) or improvements thereto; (b) trademarks, service marks, domain names, logos, trade dress and trade names (whether registered

or unregistered), and pending applications to register the foregoing; (c) copyrights (whether registered or unregistered) and pending applications to register the same; and (d) confidential ideas, trade secrets, know-how, concepts, methods, processes, formula, reports, data and other proprietary information. Except as specifically set forth in the Sales Agreement, each party to the Sales Agreement retains all right, title and interest in and to its Intellectual Property, and neither party is granting to the other any ownership, interest, right or license in such Intellectual Property.

**7.2 New Intellectual Property.** In the course of 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 the Goods ("**Heraeus Developments**"). Heraeus's Developments are and will be the sole and exclusive property of Heraeus.

**7.3 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.

**7.4 Infringement Indemnification.** Heraeus shall indemnify, defend and hold harmless Customer from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging infringement of any patent or copyright of a third party by Goods purchased by Customer under the Sales Agreement.

**7.5 Indemnification Limitations.** Heraeus obligation under Section 7.4 will apply subject to the following conditions: (a) Customer notifies Heraeus in writing within 30 days of the claim and the delay does not prejudice Heraeus's defense; (b) Heraeus has sole control of the defense and all related settlement negotiations; and (c) Customer provides Heraeus with the assistance, information and authority necessary to perform Heraeus's obligation. Heraeus may meet its obligation under Section 7.4 if Heraeus obtains a license for Customer to use the applicable Goods. Further, Heraeus's obligation under Section 7.4 will not apply to the extent the alleging infringement arises out of: (a) the modification of Goods by any party other than Heraeus; (b) the use or combination of Goods with the Customer's or any third party's products; (c) for a claim of contributory infringement; or (d) required compliance with Customer's specifications that are custom and exclusive to Customer. SECTION 7.4 AND THIS SECTION 7.5 STATE HERAEUS'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY ALLEGED INFRINGEMENT BY GOODS OR MISAPPROPRIATION BY HERAEUS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

## 8. Governing Law, Arbitration and Venue

**8.1 Governing Law.** The Sales Agreement will be construed in accordance with and governed solely by the laws of the State of New York, without regard to its conflict of laws rules.

**8.2 Mediation and Venue.** 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, any actions brought under the Sales Agreement will have venue solely in the United States District Court for the Southern District of New York or in the Supreme Court of New York County, New York, and Seller waives any and all objection to venue and jurisdiction of such courts.

**8.3 Arbitration.** Heraeus and Customer may agree to resolve any dispute arising out of this Purchase Agreement by binding arbitration administered and resolved 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 this Purchase 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.

## 9. Force Majeure.

**9.1** If Heraeus'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, or its suppliers, including, but not limited to, act of God, war, invasion, act of foreign enemy, hostilities, civil war, rebellion, civil strife, strikes or industrial dispute, insolvency or bankruptcy of a supplier, or by any law, rule, regulation, order or other action by any public authority, 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.

## 10. Notices

**10.1** 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.

## 11. Severability

**11.1** 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.

## 12. Waiver

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

## 13. Miscellaneous

**13.1 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.

**13.2 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.

**13.3 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.

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

**13.5 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).

**13.6 No Partnership.** Nothing in the Sales Contract may be construed to create a partnership, joint venture or agency relationship between Heraeus and Customer.