

HERAEUS MEDICAL COMPONENTS LLC TERMS AND CONDITIONS OF SALE

1. General

1.1 The sales agreement consists of, in order of precedence and as applicable: the Heraeus Medical Components LLC (“**Heraeus**”) quotation or statement of work or offer or order acknowledgement (typed portions control over pre-printed portions) (each, an “**Offer**”); product or service 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 and Services. Customer agrees to purchase from Heraeus the items or services specified in the applicable Offer, which are either (i) goods or products (collectively, “**Goods**”) or (ii) services and other deliverables (such as test result data) (collectively, “**Services**”).

2.2 Purchase Price, Payment Terms. Payment for the Goods or Services is due and payable within 30 days of invoice, unless a different time of payment is 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 Goods or Services. 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, Delivery, and Cancellation. Heraeus will pack and ship Goods or perform Services in accordance with its then-current practices, unless Heraeus and Customer agree otherwise in writing. Scheduled delivery of the Good or commencement of performance of Services will be confirmed by Heraeus 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. Services will be deemed

performed upon substantial completion. Heraeus will endeavor to meet all estimated delivery times; availability and delivery time of Goods or resources or capacity to perform the Services 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 or if Services are performed to substantial completion after the estimated completion date. Delivery may be subject to issuance of required licensing and approvals by local, state and federal regulatory bodies. If Customer cancels any Services less than 48 hours prior to the scheduled commencement of performance, Heraeus may impose a cancellation fee as described in the Sales Agreement.

2.4 Acceptance. Unless specified elsewhere in the Sales Agreement, Goods and Services will be deemed accepted upon delivery or performance unless Customer rejects the Goods or the results of the Services, respectively, within 48 hours of arrival at Customer’s designated destination. Claims for shortages, damage, or visible defects in Goods or non-conforming Service 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 Testing Services. In connection with the Services, Customer must:

2.7.1 Provide to Heraeus all articles submitted for testing (collectively, “**Test Articles**”) at the time specified in the Offer, but in any event at least 5 days prior to the scheduled commencement of Services.

2.7.2 Ensure the accuracy, completeness, and validity of any information supplied to Heraeus about the Test Article in support of the Services. Heraeus is not required to confirm the genuineness, accuracy, completeness, or validity of any such

information, or other Customer statements or instructions.

2.7.3 Provide to Heraeus all specifications, standards, documents and quality requirements needed in Heraeus's reasonable judgment to conduct tests in support of regulatory submissions.

2.7.4 Identify to Heraeus any Test Article that may be hazardous, including to individuals performing Services.

2.7.5 Provide to Heraeus all material safety data sheets for Test Articles, material, equipment, or components (including electronic components) delivered to Heraeus.

2.7.6 If requested, assist Heraeus with the safe and proper operation of the Test Article.

2.7.7 Pay all costs, fees, taxes, and charges of transportation (including but not limited to insurance while in transit), and shipping and handling of Test Articles. Customer will bear all risk of loss of Test Articles during transportation.

2.7.8 Pay for Services regardless of whether positive test results are achieved.

2.7.9 Report to Heraeus any actual or suspected material discrepancies in the test results data within 30 days of delivery of such data to Customer.

2.7.10 Perform such other actions and provide such other materials, information, or items related to Services as are mutually agreed upon by Customer and Heraeus.

2.8 Testing Participation. Heraeus will provide to Customer information on the quality systems, test equipment, test facilities, calibration certificates, and operator's training prior to performing Services, which Customer must acknowledge. To assure the proper operation of the Test Article, Customer or its representative who is familiar with the Test Article may attend the performance of Services. Customer or its representative may also witness Services, subject to Heraeus's visitor, internal security, confidentiality, and other applicable policies and procedures.

3. Warranty, Indemnity and Other Limitations

3.1 Limited Warranty on Goods. Subject to the terms of the Sales Agreement, Heraeus warrants that that for a period of one year from the date of receipt by Customer: (a) the Goods will be manufactured and packaged in accordance with good manufacturing practices; (b) the Goods, when delivered, will conform to their written specifications in all material respects; and (c) the Goods will be free from material defects in materials, workmanship and packaging. This warranty is

only for the benefit of Customer and is not transferrable. Customer must notify Heraeus in writing of any defects in the Goods within 20 days of the end of the warranty period.

3.2 Limited Warranty on Services. Subject to the terms of the Sales Agreement, Heraeus warrants that for a period of 30 days from the date of substantial completion of the Services: (a) the Services will be performed by individuals who are experienced and skilled in their profession in accordance with industry standard; (b) the Services, when delivered, will (i) conform to their written specifications in all material respects; and (ii) be free from defects in workmanship. This warranty is only for the benefit of Customer and is not transferrable. Customer must notify Heraeus in writing of any Service defects within 45 days of the completion of the Services.

3.3 Warranty Claims. As Customer's sole remedy in the event of a breach of any warranty set forth in Sections 3.1 and 3.2, Heraeus will, at its option, replace or refund the price paid for any Goods or re-perform Services, as applicable, that do not conform to the warranty under Sections 3.1 or 3.2. Heraeus may require inspection of the defective or non-conforming Goods and any purported defective or non-conforming Services will require a root cause analysis of the defective or non-conforming Services. Customer may not return any Goods to Heraeus unless such return is first authorized in writing by Heraeus.

3.4 WARRANTY LIMITATIONS. THE WARRANTIES UNDER SECTIONS 3.1 AND 3.2 ARE 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 WARRANTIES SHALL BE VALID OR ENFORCEABLE UNLESS SET FORTH IN A WRITTEN AGREEMENT SIGNED BY HERAEUS AND CUSTOMER.

3.5 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; (b) Customer's infringement of the intellectual property rights of any third party; or (c) personal injury or property damage arising from the use, operation, or failure to operate the Goods, except to the extent caused by: negligence of Heraeus; the breach by Heraeus of a warranty under Sections 3.1 or 3.2, or willful misconduct of Heraeus.

3.6 Heraeus Indemnity. Heraeus will indemnify and hold harmless Customer from and against any claims, losses, damages, liability and costs arising out of any claim, suit or

action alleging: (a) defective manufacture or labeling of the Goods, (b) failure of the Goods to meet the applicable written specifications, or (c) the breach by Heraeus of any warranty under Sections 3.1 or 3.2. Heraeus has the right to assume full control of the defense and settlement of any claim, suit or action arising under this Section.

3.7 Misuse of Goods. Heraeus disclaims any liability that may arise: (1) if Goods are used contrary to published specifications or instructions of use; (2) if Customer or any third party misuses, modifies, improperly installs or repairs Goods; (3) if Goods suffer an accident, neglect, or adverse conditions; or (4) after Goods are incorporated as a component into a device.

3.8 Cooperation. Heraeus will provide commercially reasonable assistance to Customer if a recall of any Goods or Customer's products that incorporate any Goods supplied hereunder is initiated by Customer. Upon request, Heraeus will also conduct appropriate investigations, provide appropriate reports, and complete process analysis and modification.

3.9 Service Conditions. Heraeus will perform Services with due and reasonable diligence, following the processes and procedures customarily applied by Heraeus to the applicable Services. Heraeus does not guarantee any specific outcome and Heraeus assumes no responsibility beyond performing its Services to this standard. Further, Heraeus does not guarantee that any Test Article will comply with any standard Customer wishes to achieve. If Heraeus is required to render a subjective opinion or interpretation, it will do so in its sole discretion and based on its interpretation of the applicable standards. Heraeus does not warrant universal acceptance of its findings.

4. LIABILITY LIMITATION

4.1 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, OR DAMAGE TO PROPERTY SUCH AS TEST ARTICLES, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER SUCH DAMAGES ARE CLAIMED IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY 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 LESSER OF (I) THE PURCHASE PRICE OF THE SUBJECT GOODS OR SERVICES OR (II) \$500,000.

5. Termination, Damages and Remedies

5.2 Early Termination. If Customer terminates or cancels the Sales Agreement for any reason other than breach by Heraeus, and in addition to any other remedy available to Heraeus under applicable law or in equity: (a) Customer must accept delivery or performance of and pay the contract price (1) for all Goods that are finished or ready for shipping and (2) for the portion of completed Services; and (b) Customer must reimburse Heraeus for (1) all actual costs incurred by Heraeus to complete the uncompleted portion of the order, (2) related third party cancellation charges, and (3) Heraeus's general, selling and administrative expenses and reasonable profit on the terminated portion of the Sales Agreement.

5.3 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 the Sales Agreement with written notice to Customer.

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, packaging, labeling, marketing or sale of Goods and/or the products into which Goods are incorporated; (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. Governing Law, Arbitration and Venue

7.1 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.

7.1 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 York County, NY and 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 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 one and a half percent (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.

8. Force Majeure.

8.1 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, Heraeus’s production plants or facilities that are essential for providing the Goods are not in operation (e.g. annual physical inventory, unscheduled plant maintenance, production changeover, legal holidays, governmental inspection), 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.

9. Notices

9.1 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.

10. Severability

10.1 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.

11. Waiver

11.1 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.

12. Miscellaneous

12.1 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.

12.2 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.

12.3 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.

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

12.5 Remedies. Heraeus’s rights and remedies are cumulative and in addition to any other rights and remedies provided by law or equity (or, as applicable to Goods,

provided under the Uniform Commercial Code except to the extent modified herein).

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