

## Heraeus Metal Processing Ltd.

### Terms and Conditions of Sale of Precious Metal-Containing Products (12/2021)

#### 1. Scope of Application

- 1.1 The manufacture, delivery and sale of precious metal-containing Products ("**Products**") by Heraeus Metal Processing Ltd. ("**Heraeus**") to its customer ("**Customer**") (together the "**Parties**") shall be exclusively governed by, in order of precedence: (i) Heraeus' quotation, offer or order acknowledgement (typed portions control over pre-printed portions) (each, an "**Offer**"), and (ii) these Terms and Conditions of Sale of Precious Metal Products ("**T&C**") (collectively, "**Contract**"). Customers' general terms and conditions of business which deviate from the Contract or from the law will not be accepted, and they will also not become part of the Contract if Heraeus accepts or executes orders in awareness of them.
- 1.2 Heraeus, itself or through affiliated entities, provides to the Customer additional services involving precious metals, for example, and without limitation, refining services, precious metal sales, precious metal leases and forward transactions ("**Precious Metal Services**"). Precious Metal Services are subject to specialized terms and conditions ("**Specialized Terms and Conditions**"), which Heraeus will provide to the Customer. The applicable Specialized Terms and Conditions will form part of the Contract and take precedence over these T&C for the relevant Precious Metal Service.

#### 2. Conclusion of Contracts

- 2.1 Unless set forth otherwise in the Offer, all Offers are nonbinding. Contracts shall be deemed concluded only after Heraeus has issued a written order confirmation or effected delivery of the Products.
- 2.2 No Contract may be terminated by the Customer except with the prior written consent of Heraeus.

#### 3. Scope of Services

- 3.1 Heraeus will deliver all Products according to the specification set forth in the Offer ("**Specification**"). If no Specification is set forth in the Offer, Heraeus' standard specification for the relevant Products shall be applicable and binding on the Customer. Customer's specifications which deviate from the Specification will not form part of the Contract unless otherwise agreed with Heraeus. Heraeus is entitled to change the Specification for manufacturing reasons, due to legislative changes, or for Product update and maintenance.
- 3.2 No other data, properties or information regarding the Products which is not included in the Specification shall form part of the Contract. Data includes, without limitation, (i) data and information included in data sheets, brochures and promotional and information material of Heraeus, and (ii) properties of Product samples.
- 3.3 Unless contractually agreed in writing between the Parties, Heraeus is free to choose the procedures, processes, equipment, raw materials, consumables and other materials

used to achieve the Specification and is not obligated to inform the Customer of any change.

- 3.4 Specifications changes regularly. Unless contractually agreed in writing, Heraeus is not obligated to inform the Customer of any change of the Specification between consecutive Contracts. The Customer is responsible for reviewing the Specification of each Offer to ensure fitness for the Customer requirements.
- 3.5 Heraeus is not obligated to verify the correctness of any information provided by the Customer, and Heraeus shall also not be obligated to investigate if the execution of the Contract infringes any third-party property rights.

#### 4. Additional Work/Customer Changes

- 4.1 Heraeus may perform additional work for the Customer not covered in the Offer. Any additional work is subject to additional charges, which Heraeus will disclose to the Customer in advance.
- 4.2 Change requests by the Customer after production of Products has commenced, including, but not limited to, changes in quantities of Products ordered, changes in packaging agreed to by Heraeus and the Customer in writing, changes in Specifications of Products, or changes in raw material components of Products, are subject to Heraeus' prior consent and may result in a new price and new Offer.

#### 5. Provision of Precious Metals

- 5.1 Unless otherwise specifically set forth in the Offer, the precious metals required for the Products must be purchased by the Customer from Heraeus at the time set forth in the Offer. If provision in physical form is set forth in the Offer, the precious metals shall be provided physically by DDP Shannon pursuant to the conditions and at the time set forth in the Offer. If nothing is set forth in the Offer, the required precious metals (nominal weight) must be
- 5.2 from a brand listed in following Good Delivery List:

- Pt, Rh, Ir and Ru: "**Pt Good Delivery List**" of the London Platinum and Palladium Market ("**LPPM**"),
- Pd: "Pd Good Delivery List" of the LPPM,
- Ag: "**Ag Good Delivery List**" of the London Bullion Market Association ("**LBMA**"), or
- Au: "**Au Good Delivery List**" of the LBMA,

5.2.1 primarily, be - with regard to the Specification of the Products - suitable for the production of the Products and, secondly, of "Good Delivery" (a) in form of free-flowing sponge, (b) in case of Pt and Pd: of 99.95% minimum purity, in case of Ir, Rh and RU: of 99.95%, and (c) be such that loss on ignition ("**LOI**"), loss on reduction ("**LOR**") and boil-out and reduction loss ("**BORL**") on sponge are a maximum of 0.05% quality with a minimum purity of 99.95 %.

- 5.3 Prior to any physical delivery of the required precious metals, Heraeus must be in receipt of the certificate of analysis and the certificate of origin of the precious metals.
- 5.4 With the consent of Heraeus, the physical delivery may be replaced by a delivery by weight account transfer. In this case, additional fees will be charged, the amount of which Heraeus will inform the Customer in each case.
- 5.5 If the Customer fails to timely provide the necessary quantity or quality of precious metals, Heraeus may, in its sole discretion and at the cost of the Customer: (i) delay manufacture of the Products until the Customer provides the necessary quantity and quality of precious metal; (ii) refuse to manufacture the Products; or (iii) produce the Products with Heraeus's precious metal and assess the Customer a lease fee, payable in advance of delivery of the Products at current market rates interest for the period between the time of order and actual provision. In case of a quality deviation Heraeus will also charge a fee of EUR 1,500.00 to cover the costs incurred in connection with the inspection, handling and return of the precious metals. The Customer is also responsible for, and Heraeus reserves the right to assert claims for, expenses, costs or damages in excess thereof.
- 6. Purchase Price, Price Adjustments, Payment Terms**
- 6.1 Prices and time of payment for the Products ("**Commercial Terms**") are set forth in the Offer. Unless otherwise stated, all prices are exclusive of (i) any purchase price for any precious metals contained in or required for the manufacture of the Products and (ii) applicable taxes. The purchase price for any precious metals is, as the case may be, set forth in a separate, individual contract.
- 6.2 Heraeus shall be entitled to adjust the purchase price at reasonably exercised discretion if factors that existed upon issuance of the Offer and became the basis of the Contract significantly change. A significant change of factors shall be deemed to exist, by way of example, but without limitation, in the following cases:
- 6.2.1 Precious metal prices: If the price of any of the precious metals specified for the respective Products according to the Price Base on the day of actual delivery of the Products differs by more than 10% from the price of such precious metals according to the Price Base on the day on which the Contract was concluded; "Price Base" shall have the meaning set forth in Sec. 15.2, unless the Parties agreed on a different price base for the relevant Contract,
- 6.2.2 Precious metal interest rates: If the interest rate which Heraeus has to pay for leasing any of the precious metals specified for the respective Products on the day of actual delivery of the Products differs by more than 5% from the interest rate for such precious metals on the day on which the Contract was concluded.
- 6.2.3 Any cost increase deriving from changes of taxes, levies and other duties incurring after conclusion of the Contract.
- 6.3 All payments to Heraeus must be made by bank transfer from an account held by the Customer itself and with a bank located in the same country as the Customer. Heraeus reserves the right to decline all payments which do not comply with these requirements and delay any delivery until correct payment was made.
- 6.4 All payments by the Customer must be made into the account named by Heraeus. Heraeus will always inform the Customer about a change of the payment account by letter (not by e-mail) and at least one month in advance. The Customer must have the account confirmed by a telephone call to a contact person at Heraeus known to the Customer (at a telephone number already known to the Customer). Heraeus shall not be liable for erroneous bank transfers by the Customer or for the manipulation of bank data by third parties.
- 6.5 Payments from Heraeus to the Customer will only be made to an account held by the Customer with a bank located in the same country as the Customer.
- 6.6 If Heraeus has granted to the Customer in the Offer a period for payment or has refrained in whole or in part from requiring the provision or increase of securities, Heraeus shall still have the right to demand payment in advance, a shorter payment period or the provision or increase of securities at a later point in time if circumstances occur or become known which justify an increased risk assessment of the claims against the Customer. This may in particular be the case if
- 6.6.1 the existing securities have deteriorated or are likely to deteriorate in value, or
- 6.6.2 the financial condition of the Customer has changed or is likely to change adversely. An adverse change in the financial condition of the Customer shall in particular be deemed to exist if the Customer's credit rating by an internationally acknowledged credit rating agency and/or credit agency (including but not limited to Standard & Poor's, Fitch, Moody's, Coface, Euler Hermes, Creditsafe, Creditreform, Bureau von Dijk, Sinotrust, D&B) decreases.
- 6.7 The right according to Sec. 6.6 shall apply to both future deliveries of Products and to Products already delivered but not yet paid for. With regard to products already delivered but not yet paid for, Heraeus may declare its purchase price claim immediately due for payment.
- 6.8 Heraeus will grant a reasonable time period for the provision or increase of securities. If Heraeus intends to exercise its right of termination without notice pursuant to Sec. 19.1.3 in case the Customer defaults in the timely performance of its obligation to provide or increase securities, Heraeus will inform the Customer thereof in advance.
- 6.9 At the request of Heraeus, the Customer shall be obligated to provide Heraeus within a reasonable time period with such information on the Customer's financial and business condition as Heraeus may reasonably require to perform a credit assessment of the Customer. The Customer shall also be obligated to inform Heraeus immediately in writing if circumstances occur or become known which justify an increased risk assessment of the claims against the Customer pursuant to Sec. 6.6.
- 6.10 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 provide the Products 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 and demand securities therefor.

6.11 Heraeus charges interest for default in payment at the rate per centum which equals the late payment interest rate prescribed in accordance with the Prompt Payment of Account Act, 1997 (as amended by the European Community (Late Payment in Commercial Transactions) Regulations 2002 which is currently 8% per annum above EURIBOR the right to furnish proof of a higher or further damage caused by default remains reserved.

## 7. Delivery of the Products

7.1 Unless set forth otherwise in the Offer, Heraeus delivers to FCA Shannon (Incoterms 2020). Products will be deemed delivered when they are (a) provided to the carrier for shipment or (b) put into storage according to Sec. 8, whichever occurs first.

7.2 Unless set forth otherwise in the Offer, Heraeus will pack and ship the Products in accordance with its usual practices.

7.3 If the Customer wishes to allocate portions of an agreed total quantity for delivery in several partial deliveries, the Customer shall spread such allocation evenly over the delivery period. The allocation of more than 10% of the total quantity of one partial delivery on one date is subject to the prior written consent of Heraeus.

7.4 Unless set forth otherwise in the Offer, times quoted for delivery are not binding. Heraeus is not and will not be liable for any costs or damages that the Customer or any other party may suffer if Products are shipped after the estimated delivery dates. Heraeus shall endeavor to meet the indicated times but reserves the right to vary the times of shipment and delivery, especially, without limitation, in case of Operation Disruption. "Operation Disruption" shall include any event during which Heraeus' production facilities that are essential for the manufacture of the Products are not fully in operation. This comprises, without limitation: (i) annual physical inventory, (ii) scheduled or unscheduled plant maintenance, (iii) production changeover, (iv) governmental inspection or (v) any Force Majeure Event (as defined in Sec. 16).

## 8. Storage

8.1 If the Customer refuses or otherwise declines to accept delivery of Products or does not provide any due payment, Heraeus may, as the Customer's agent and without liability of Heraeus, store or arrange for storage of such declined Products at the Customer's expense. For such storage Heraeus will charge 1% of the invoice amount for each started month of the delay in acceptance r payment.

## 9. Incoming Products Inspection; Acceptance

9.1 Unless contractually agreed upon otherwise in writing, the Customer shall, within two (2) business days upon receipt of the delivered Products,

9.1.1 verify the quantity and identity of the Products delivered,

9.1.2 inspect the Products for externally visible damages, in particular, transport and packaging damages,

9.1.3 compare the inspection certificate of the Products to the Specification for deviations, and

9.1.4 analyze a representative number of samples of the Products for compliance with the Specifications.

9.2 If the Customer discovers any Defect (as defined in Sec. 10.1) or shortfall during the inspection, the Customer shall notify Heraeus thereof in writing no later than seven (7) calendar days after receipt of the Products. In case of any transport damages, the Customer shall take all reasonable measures to protect the rights of Heraeus towards the carrier or the insurer.

9.3 In case that the Customer discovers later, e.g. during the processing of the Products, any Defect or shortfall, which could not be detected in the course of the inspection described in Sec. 9.1, the Customer shall inform Heraeus in writing within seven (7) calendar days after the discovery.

9.4 Any and all claims of the Customer regarding a Defect or shortfall shall be excluded (i) if the Customer detected the Defect or shortfall, but did not notify Heraeus in the correct form and time, or (ii) if the Customer did not detect the Defect or shortfall, but could have detected it during the inspection described in Sec. 9.1 or (iii) if the Customer did not execute inspection at all or not in the way described in Sec. 9.1.

## 10. Warranty and Indemnity

10.1 Heraeus' Warranty:

10.1.1 Heraeus warrants that upon date of delivery to the Customer, the Products will conform to the Specifications. Products which comply with the Specifications shall be deemed free from defect to the exclusion of any claim of the Customer whatsoever. Only slight deviations of the Product to the Specification that do not adversely affect the general performance of the Products do not entitle the Customer to make any claims against Heraeus.

10.1.2 Heraeus warrants that to its knowledge (a) the production, marketing and distribution of the Products does not infringe any patent rights, utility model rights, design rights, trademark rights or copyrights of a third party ("Intellectual Property Rights"); and (b) there is no claim, proceeding or threat of a claim arising from the infringement of any third party's Intellectual Property Rights.

10.1.3 This warranty under Sec. 10.1 is exclusive and made in lieu of all other warranties, express or implied, in particular, Heraeus assumes no responsibility for any fitness of the Products for a particular purpose. No modification or alteration of the warranty under Sec. 10.1 shall be valid or enforceable unless set forth in a written agreement signed by Heraeus and the Customer.

10.2 Strictly on the basis that the Customer has complied fully with its obligations according to Sec.9, Heraeus will, at its discretion, replace the defective Products or refund the price paid for any Defective Products. Heraeus shall not be responsible for and shall not bear any costs related to the disassembly and

reassembly of the Products at the Customer or the Customer's Customers.

- 10.3 Heraeus may require the return of the defective Products for evaluation of the alleged defect. The Customer may not return any Products to Heraeus unless such return is first authorized in writing by Heraeus. Return of the defective Products shall be solely at the Customer's responsibility and costs. Heraeus will reimburse the Customer for pre-agreed, reasonable and vouched transportation costs.
- 10.4 In case that Heraeus replaces defective Products, the defective Products must be returned to Heraeus for refining. The Customer shall bear the usual costs of refining and any precious metal losses. In case that the defective Products cannot be returned by the Customer, the Customer is obligated to provide the precious metals required for the manufacture of the replacement Products according to the provisions set forth in Sec. 4.
- 10.5 Heraeus may require the Customer to reimburse Heraeus for all reasonable Heraeus charges if Heraeus is required to examine, rework or replace returned Products that are determined by Heraeus to comply with the warranty under Sec. 10.1.

## **11. Hazardous Products, Customer's Responsibility**

- 11.1 The Customer acknowledges that there may be hazards associated with the storage, use and disposal of Products. The Customer ensures that only qualified and trained individuals who have been fully advised of these potential hazards will handle the Products.
- 11.2 The Customer is solely responsible for all new products which are manufactured by the Customer or third parties using the Products.
- 11.3 The Customer shall indemnify and hold harmless Heraeus from and against any claims arising (a) out of a breach by the Customer of the Contract, or (b) from the use of the new products except to the extent caused by the gross negligence or willful misconduct of Heraeus.

## **12. Liability Limitation**

- 12.1 With respect to a damage related to the delivery of specific Products, including, without limitation, damages caused by delay in delivery and infringement of third party Intellectual Property Rights, the liability of Heraeus shall be limited to 50% of the purchase price (exclusive the purchase price for precious metals) of the respective Products.
- 12.2 With respect to any damage suffered by the Customer that is not covered in Sec. 13.1, but relates to another breach of Contract, the liability of Heraeus shall be limited to 10% of the invoiced and paid net sales revenue of the Products (exclusive the purchase price for precious metals) delivered to the Customer in the preceding calendar year.
- 12.3 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 the Customer or any third party, whether in an action, in contract, or tort, or otherwise, even if advised of the possibility of such damages.

- 12.4 Any liability of Heraeus is excluded if the Products are modified, damaged or impaired in any way whatsoever, or if the Products are used contrary to the instructions in the Material Safety Data Sheet.

## **13. Reservation of Title, Security Interest**

- 13.1 Notwithstanding delivery and the passing of risk of loss and damage of the Products, or any other provision of these T&C, the title to the Products shall not pass to the Customer until Heraeus has received payment in full of the price of the Products and all other products agreed to be sold by Heraeus to the Customer for which payment is then due.
- 13.2 The Customer shall have the right to process, mix, blend or combine the Products subject to Heraeus' reservation of title with other items in his ordinary course of business unless and until revocation by Heraeus, which may be declared at any time and without giving reasons. If the Products have been processed by the Customer, Heraeus reservation of title shall extend to the new products. If the Products which are subject to a reservation of title provision are inseparably blended/combined with other items which are not owned by Heraeus, Heraeus acquires a coownership of the resulting new item in the ratio of the invoice value of the Products subject to reservation of title and the replacement value of the other items used at the time of such processing or blending/combining.
- 13.3 Heraeus has the right to enter the Customer's premises to retrieve the Products if payment in full of the price of the Products has not been received under the agreed payment terms. The Customer must ensure that the Products are stored separately to any other goods held by the Customer.
- 13.4 The Customer shall have the right to resell the Products subject to reservation of title or sell the new products in its ordinary course of business until revocation by Heraeus, which may be declared at any time and without giving reasons. If, upon such sale/resale, the Customer does not receive the full purchase price in advance or upon delivery of such Products or new products, the Customer shall agree with its Customer a retention of title arrangement on the same terms as set out herein. The Customer hereby assigns to Heraeus all its claims arising from such sale/resale and its rights arising from the said retention of title arrangement. Upon Heraeus' request, the Customer shall inform its customer of such assignment of rights and provide Heraeus with the information and documents necessary to enforce Heraeus' rights. Notwithstanding the foregoing, the Customer shall only be entitled to collect payments from claims arising from such sale/resale if the Customer has satisfied its liabilities to Heraeus.
- 13.5 Heraeus may document or register its reservation of title or security interest in any Products described herein in as appropriate under applicable law.
- 13.6 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 Heraeus' own choice at the request of the Customer.

## 14. Weight Accounts for Precious Metals, Lien

- 14.1 Heraeus maintains precious metal weight accounts. The precious metal weight accounts are maintained as current accounts per precious metal, on which any receivables from purchases and sales, services, in particular recycling services, as well as any other in- and outflows (such as precious metal transfers) are booked by type and amount. Any physical metal will be commingled.
- 14.2 Any positive balance on a precious metal weight account constitutes a claim for delivery of physical precious metals in the respective amount. Physical return of the precious metals may take up to ten (10) working days after submitting a corresponding request depending on metal availability.
- 14.3 Heraeus regularly issues balance confirmations and precious metal account statements by which the Parties' mutual claims for the delivery of precious metals during the indicated time period are offset and replaced by a claim to the balance of account. Any objections against a balance confirmation or a precious metal account statement for incorrectness or incompleteness must be raised by the Customer no later than six (6) weeks after the Customer's receipt of such balance confirmation or precious metal account statement. If the Customer files the objection in writing, the dispatch of the written objection within the six-week period will be sufficient to meet the deadline. The absence of a timely objection will be deemed to constitute approval by the Customer. Heraeus will specifically inform the Customer of this consequence when issuing a balance confirmation or a precious metal account statement. The Customer may demand a correction of the balance confirmation or the precious metal account statement also after the elapse of the aforementioned time period; always provided, however, that in such case the burden of proof for the unlawful debiting of the Customer's metal account or the non-issuance of a credit that is due to the Customer will rest on the Customer.
- 14.4 Heraeus shall be obliged to return precious metals to the Customer or to carry out instructions of the Customer regarding the credit items entered on its weight account only if and to the extent that the aggregate value of these precious metals exceeds the sum total of all claims arising to Heraeus from the business relationship with the Customer.
- 14.5 Heraeus shall be granted a lien on the credit items and the balances in favor of the Customer on the Customer's precious metal weight account in order to secure all claims of Heraeus arising from the business relationship with the Customer. The foregoing lien shall be created as soon as the precious metal has been delivered to Heraeus, or the credit items or the balances in favor of the Customer have been created in the weight account.
- 14.6 In the event of the Customer's delay in performance, an extraordinary termination of any Contract by Heraeus or in the event that the Customer files for insolvency or that insolvency proceedings are instituted against the Customer's assets, Heraeus shall be entitled to privately sell the seized precious metals at the then valid market price. If the proceeds of such

private sale exceed Heraeus' claims against the Customer, the exceeding amount shall be paid out to the Customer. Prior to any such sale, Heraeus shall notify the Customer of the impending sale of the seized precious metals stating the amount owed by the Customer due to which such sale is intended. Heraeus shall promptly inform the Customer about the effected sale of the seized precious metals and of the sales proceeds thereby achieved.

## 15. Netting Agreement

- 15.1 Heraeus may, at any time, set off its own claims (whether for money or the delivery of precious metals) against claims of the Customer or its affiliated companies (whether for money or the delivery of precious metals).
- 15.2 If the claim of Heraeus or the counterclaim are for the delivery or the transfer of precious metals, the value of the precious metals shall be determined on following price bases (each "**Price Base**"):
  - 15.2.1 Gold: based on the P.M. price per troy ounce published by the LBMA in Euro on [www.lbma.org.uk](http://www.lbma.org.uk) (LBMA Gold Price),
  - 15.2.2 Silver: based on the price per troy ounce published by the LBMA in Euro on [www.lbma.org.uk](http://www.lbma.org.uk) (LBMA Silver Price),
  - 15.2.3 Platinum and palladium: based on the P.M. price per troy ounce published in Euro on [www.lppm.com](http://www.lppm.com) (LBMA Platinum/Palladium Price), and
  - 15.2.4 Iridium, rhodium and ruthenium: based on the Platts Metals Week New York Dealer Mid-Price per troy ounce determined in US Dollar by S&P Global Platts (a division of S&P Global Inc.) on a weekly basis in each case based on the price valid on the day of dispatch of the declaration of set-off.
- 15.3 If the claim or the counterclaim are for the payment of money in different currencies or if the fixing is conducted in a currency other than the Euro, these currencies shall be converted into Euro at the Euro foreign exchange reference rate determined by the European Central Bank on the day of dispatch of the declaration of set-off.
- 15.4 The right of set-off also permits the set-off of claims of companies that are affiliates of Heraeus against claims of companies that are affiliates of the Customer.
- ## 16. Force Majeure
- 16.1 If any performance by either party under a Contract 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, without incurring any liability, be excused from such performance to the extent and for the duration of such prevention, restriction or interference. In case of a Force Majeure Event, Heraeus shall be entitled, but not obligated, to subcontract its services to a third party.
- 16.2 By way of example only, but without limitation, the following shall be considered as Force Majeure Events: (i) Acts of God including, without limitation, flood, storm, earthquake, fire, (ii) war, explosion, riot, insurrection, acts of the public enemy,

sabotage, invasion (iii) rules or orders of government, public or similar authority, (iv) epidemics or pandemics including, without limitation the SARS-CoV-2; formerly called 2019-nCoV and any form of same and restrictions deriving therefrom, including, without limitation border closures, reinforced border controls and curfews, (v) strikes, lockouts or similar differences with workmen, and (vi) any Operation Disruption if caused by an event outside of the reasonable control of the respective party. A Force Majeure Event affecting Heraeus shall also be deemed to exist where Heraeus' sub-suppliers are affected by any of these Force Majeure Events.

- 16.3 The affected party shall notify the other party as to the nature and probable duration of the Force Majeure Event.
- 16.4 Each party will exercise reasonable commercial efforts to resolve any Force Majeure Event as promptly as practicable, provided, however, that 10% of the purchase price (excluding any payments for precious metals) of the affected Contract is the upper limit of costs attributable to "reasonable commercial efforts". In case of a Force Majeure Event, Heraeus shall be entitled, but not obligated, to subcontract its services to a third party.
- 16.5 If the Force Majeure Event continues for an uninterrupted period of forty-five (45) days, the other party may terminate any affected Contract, provided the Force Majeure Event is still in effect upon the termination date.

## 17. Import / Export

- 17.1 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 license 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.
- 17.2 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.
- 17.3 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.
- 17.4 The Customer shall provide Heraeus with all information concerning the final recipient, the final destination and the intended use of the Products. If an end-use certificate is required, the Customer shall send such certificate to Heraeus and/or use its best efforts to obtain the end-use certificate.

## 18. Confidentiality

- 18.1 All information provided by Heraeus to the Customer, which might fairly be considered to be of a confidential nature and

shall include, without limitation commercial, business, financial, technical, software code, operational, administrative, marketing, economic or other information or data (including trade secrets, know-how, Parties details, new products, prices, strategy, marketing, commercial relationships, business opportunities and future plans) in whatever form supplied or received (whether in oral, written, magnetic, electronic, digital or any other form) irrespective of whether it has been made available or will be made available in the future in oral or written form, in the form of physical objects or in any other way, shall be kept strictly confidential from third parties, may be used exclusively for the purposes of the cooperation with Heraeus and may be disclosed only to those employees who absolutely need to know it for the purposes of the cooperation with Heraeus. The transmission of the information does not imply any explicit or implicit right of use, in particular no right of prior use. The aforementioned confidentiality obligations shall continue to apply for an unlimited period of time, irrespective of the duration of the cooperation with Heraeus.

## 19. Termination

- 19.1 Heraeus shall be entitled to terminate a Contract with the Customer without notice upon the existence of good cause which makes it unreasonable for Heraeus to continue the Contract, even with due regard to the legitimate interests of the Customer. Good cause shall in particular be deemed to exist if
- 19.1.1 the Customer has provided incorrect information about its financial condition which was of major importance to Heraeus in its decision to grant periods for payment to the Customer or to engage in other business transactions involving risks for Heraeus, or
- 19.1.2 a material adverse change in the Customer's financial condition or in the value of a security occurs or is likely to occur and the performance of an obligation towards Heraeus - despite the realization of a security existing for this purpose - is jeopardized, or
- 19.1.3 the Customer defaults in the performance of its obligation to provide or increase securities pursuant to Sec. 6.6 or pursuant to another agreement within a reasonable time period fixed by Heraeus, or
- 19.1.4 there is a material breach of any of the terms of this Agreement by the Customer.
- 19.2 If the good cause consists in the breach of a contractual obligation, the termination shall be permissible only after the unsuccessful expiration of a reasonable time period granted for the cure of such breach or after a failed reminder, unless this may be dispensed with due regard to the particular circumstances of the individual case.

## 20. Governing Law, Arbitration and Venue

- 20.1 These T&C shall be exclusively governed by, and construed in accordance with the laws of the Republic of Ireland and the Parties hereby agree that the courts of Republic of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement. The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) shall be excluded.

20.2 All disputes arising out of or in connection with any Contracts concluded with Heraeus, or the operation or construction thereof or any other dispute or difference between the Parties shall be referred to arbitration and to the final decision of an arbitrator to be appointed by agreement between the parties in dispute or, in default of such agreement, by the President of the Law Society of Ireland and the decision of the arbitrator shall be final and binding on the Parties to the dispute (save in the case of manifest error or fraud).

20.3 The language of arbitration shall be English.

## **21. Miscellaneous**

21.1 The Contract and the documents referenced in the Contract constitute the entire understanding and agreement between Heraeus and the Customer, and supersede all prior oral or written agreements with respect to the subject matter of the Contract.

21.2 Should any provisions of these T&C be or become invalid, this will not affect the legal effectiveness of the remaining provisions. All provisions that are continuing in nature, including but not limited to those involving indemnity, will survive termination or expiration of the Contract.

21.3 No failure by Heraeus to enforce or take advantage of any provision under a Contract will constitute a waiver of the right subsequently to enforce or take advantage of such provision.

21.4 The Contract and any amendment hereto may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which together shall constitute one and the same instrument. The Parties agree that this Contract may be concluded or amended in written or text form. In particular, but not limited to, electronic signatures (e.g. created using Adobe Sign) shall be valid and binding. An electronically signed document shall be deemed to be "written" or "in writing". Paper copies of electronically signed documents shall be admissible as evidence in any judicial or arbitral proceeding.