

Heraeus South Africa General Terms and Conditions on the Refinement or the Purchase of Precious Metal-Containing Material (05/2015)

1 Scope of Application

1.1. These General Terms and Conditions (these "**Terms**"), together with the quotation provided by Heraeus South Africa (Pty) Ltd. ("**Heraeus**") ("**Quotation**"), govern the refinement and the purchase by Heraeus of precious metal-containing material ("**Refining Material**") and contain the entire agreement and understanding between the parties with regard to any refining contracts to be concluded between Heraeus and the Customer. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. The provisions of these Terms and the Quotation are conclusive and binding upon the parties.

Heraeus hereby rejects any terms and conditions of the Customer which deviate from these Terms or from applicable rule or law. The Customer's terms and conditions will be accepted only with the express written consent of Heraeus.

1.2. Prior to the delivery of the Refining Material to Heraeus, the Customer must make a binding decision as to whether the Refining Material is to be sold to Heraeus (purchase contract) or to be delivered to Heraeus for refining (refining order).

2 Delivery of the Refining Material

2.1 The Refining Material shall be delivered "DPP", Incoterms 2010 (place of destination as indicated in the Quotation) at the Customer's risk and expense.

2.2 During an incoming inspection of the Refining Material, Heraeus will determine the type and number of containers and the gross incoming weight. The gross incoming weight will be recorded in writing and the Customer will be notified. If the Customer does not object within 4 working days to the weight so notified, the weight will be deemed accepted by the Customer.

During the incoming inspection, Heraeus is not obliged to open the containers or to check the delivered material for consistency with the documentation regarding the Refining Material provided by the Customer.

If Heraeus discovers in the course of the incoming inspection or at a later point in time that the Refining Material is not consistent with the documentation regarding the Refining Material provided by the Customer, Heraeus must inform the Customer of the respective inconsistencies only if Heraeus refuses to perform the refining based on these inconsistencies. Heraeus will also inform the Customer if the Refining Material is quarantined due to inconsistencies with the documentation regarding the Refining Material or if the Refining Material containers were compromised.

2.3 The Customer will remain the owner of the Refining Material. The refinement will be executed for the Customer as the manufacturer so that the Customer becomes the owner of the precious metals to be refunded pursuant to Section 6. The Customer's title to the Refining Material including all materials that are not Covered Precious Metals will lapse as soon as the Refining Material is refined and ceases to exist in its original shape and texture. Furthermore, the Customer shall have no title to materials that are lost in the processes customarily performed by Heraeus on the Refining Material. The Customer's title to low-grade materials removed prior to refining in

consultation with the Customer or materials declared as discarded (see Section 4) shall lapse upon removal of these materials.

2.4 In case the Refining Material is purchased, Heraeus shall become the owner of the Refining Material upon passing of the risk.

3 No Guarantee of Success

Heraeus will perform its services for the Customer with due and reasonable diligence, following the processes and procedures customarily applied by Heraeus to precious metal-containing material. Heraeus does not guarantee any specific outcome or assume any responsibility beyond performing its services to this standard. In particular, Heraeus does not and cannot guarantee the successful pretreatment, homogenization, sampling or refining of the Refining Material.

4 Removal of Materials, Homogenization, Pretreatment and Sampling

4.1 Heraeus will determine the net incoming weight by deducting the tare weight from the gross incoming weight. If necessary, Heraeus will pretreat and homogenize the Refining Material. In certain cases, low-grade materials or materials to be discarded will be removed in consultation with the Customer prior to refining. The weight of the homogenized material less (a) the weight of the retained samples and (b) any weight loss from drying will be the settlement weight relevant for final settlement ("**Settlement Weight**").

4.2 After homogenization of the Refining Material, Heraeus will extract at least the agreed number of samples. From the extracted samples, an agreed number of samples will be given to the Customer.

4.3 Pretreatment, homogenization, sampling and splitting of samples will be performed consistent with the processes and procedures customarily applied by Heraeus.

4.4 If technically feasible, the Customer or its representative may attend the sampling. If the Customer or its representative is present during sampling, the Customer must acknowledge and sign the applicable sampling protocol, a copy of which the Customer will receive for its records. If neither the Customer nor its representative attend the sampling, the Customer will not receive a copy of the sampling protocol.

5 Assay of the Refining Material

Based on Heraeus's long-time experience, Heraeus will determine the settlement value for the refining material ("**Settlement Value**") on the samples in a globally consistent and uniform procedure. Only the precious metals that have been agreed between the parties ("**Covered Precious Metals**") will be included in Heraeus's statement of Settlement Values (and subsequently refunded to the Customer). If the Customer does not demand an exchange of Settlement Values, the Settlement Value determined by Heraeus and communicated to the Customer shall be the settlement basis for final settlement ("**Settlement Basis**"). If the Customer wishes an exchange of Settlement Values, the Settlement Basis will be determined as follows:

Heraeus and the Customer will simultaneously exchange one Settlement Value by registered mail on an agreed date.

Thereafter:

If the exchanged Settlement Values fall within the splitting limits, the arithmetic mean of the exchanged Settlement Values will be the Settlement Basis. The splitting limits are set forth in the Quotation.

If the exchanged Settlement Values are outside the splitting limits, the exchange of the Settlement Values will be repeated. The second exchange will automatically supersede the results of the first exchange. If the Settlement Values of the second exchange are still outside the splitting limits, the parties will endeavor to amicably agree on a Settlement Basis. If no agreement is reached, a neutral umpire laboratory will conduct an umpire assay on a retained umpire sample.

The umpire laboratory will be selected from a pre-approved list provided with the Quotation after eliminating: (a) any laboratory that represented either party at the sampling of the Refining Material; (b) any laboratory that conducted assays for any party and (c) one laboratory by each party for any or no reason.

If the result obtained by the umpire (calculated as the arithmetic mean of the assay results determined by the umpire) falls between the Settlement Values exchanged by the parties in the second assay exchange, the arithmetic mean of the umpire's result and the Settlement Value of the second assay exchange that is closest to the umpire's result shall be the Settlement Basis. If the result of the umpire is outside the Settlement Values of the parties, the Settlement Value of the second assay exchange that is closest to the umpire's result will be the Settlement Basis.

The process in the preceding paragraph also applies if the exchange of Settlement Values is not repeated before an umpire assay.

The cost of the umpire assay must be paid by the party whose Settlement Value deviates most from the umpire's result.

Heraeus will keep unused samples for six months after the date of collection or the sampling protocol.

If the Customer fails to engage with Heraeus in an exchange of the Settlement Values for longer than six months, the Settlement Value communicated by Heraeus will be the Settlement Basis.

6 Final Settlement; Calculation of the Purchase Price

6.1 The Precious Metal Credit for each Covered Precious Metal ("**Precious Metal Credit**") will be determined as follows:

$$\text{Precious Metal Credit (in the agreed unit of weight)} = \text{Settlement Basis in } \frac{\%}{100} \times \text{Return Rate in } \frac{\%}{100} \times \text{Settlement Weight in the agreed unit of weight}$$

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Additional calculation parameter: Minimum Deduction
If a Minimum Deduction is agreed with the Customer, this Minimum Deduction will not be considered for the calculation of the Precious Metal Credit.

The Minimum Deduction (if agreed) and the Return Rates for the Covered Precious Metals are set forth in the Quotation.

Unless otherwise expressly agreed in writing, Heraeus does not return or compensate for any low-grade material or other materials discarded in consultation with the Customer.

6.2 If a refining order is placed, Heraeus will credit the Precious Metal Credit to the Customer's precious metal weight account maintained at Heraeus within the Precious Metal Credit availability period agreed with the Customer, unless otherwise agreed between Heraeus and the Customer. If the availability period of the Precious Metal Credit is expressed in days, the term days shall mean working days, to the exclusion of Saturdays, Sundays, legal holidays and bridge days of the Heraeus plant. It is the understanding of the parties that the refining order will be deemed performed by Heraeus upon completion of the final settlement.

7 Precious Metal Weight Accounts

Subject to the Customer's acceptance of Heraeus's policy on precious metal weight accounts for each Covered Precious Metal, Heraeus will maintain separate precious metal weight accounts for the Customer. Any physical metal, however, will be commingled. With Heraeus's balance confirmations and weight account statements, the parties' mutual claims for the delivery of precious metals will be offset and replaced by a claim to the balance of account. Any objections against a balance confirmation or a weight account statement for incorrectness or incompleteness must be raised by the Customer within five (5) days of the Customer's receipt of such balance confirmation or weight account statement. The absence of a timely objection will be deemed to constitute approval by the Customer of the applicable balance or account statement. Heraeus will specifically inform the Customer of this consequence when issuing a balance confirmation or a weight account statement. The Customer may demand a correction of the balance confirmation or the weight 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.

Heraeus may, at any time and without stating reasons, cancel precious metal weight accounts of the Customer upon 10 working days' notice and return precious metals to the Customer in order to balance the Customer's weight accounts. The requirements for the precious metals to be returned are set forth in Section 9.1 below.

8 Purchase of the Refining Material

If a purchase is agreed upon, the purchase price for the purchased Refining Material is calculated from the Precious Metal Credit in the agreed unit of weight and the agreed price in Euro per agreed unit of weight, unless otherwise agreed between the parties in the individual case.

The purchase price is calculated upon the availability of the Precious Metal Credit in accordance with the Quotation or order confirmation of Heraeus. Heraeus will pay the purchase price to the Customer within 10 working days of the date of the self-billing invoice issued by Heraeus or the date of the invoice issued by the Customer.

If Heraeus and the Customer fail to agree on a final purchase price within six (6) months from the availability of the Precious Metal Credit, Heraeus may rescind the purchase contract and return the refundable precious metals to the customer pursuant to Section 9.

9 Further Disposition of Credited Precious Metals

9.1 With regard to the precious metals credited to its weight account, the Customer has the following options:

- a) Sale of the precious metals to Heraeus under a separate purchase agreement at the purchase price offered by Heraeus. Unless agreed upon in advance (see Section 1.2) Heraeus is under no obligation to purchase the offered precious metals. Payments by Heraeus will not be effected to a third party and are subject to the presentation of an original tax invoice or a document of equivalent evidentiary value.
- b) Physical return of the precious metals (bars, granules, sponge or powder) to Customers licenced to receive unwrought precious metals subject to applicable rule or law, which may take up to 10 working days after the relevant precious metal is available. The return shipment will be made ex works Heraeus exclusive of packaging, transport and transport insurance. If the Customer elects to receive the precious metals in the form of bars or granules, the Customer will pay the additional costs for bar manufacture. Upon request, Heraeus will inform the Customer of the amount of such costs.

The precious metals to be returned shall be of the following quality:

Platinum	sponge, 99.95 % *
Gold	granules, 99.95 %
Silver	granules, 99.95 %
Iridium	powder, 99.90 %*
Rhodium	powder, 99.90 %*
Palladium	sponge, 99.95 %*, ground, grain size ≤ 2 mm
Ruthenium	powder, 99.90 %*

* this value may be further reduced by a loss of reduction (LOR) not exceeding 0.05%

- c) Return of the precious metals as part of products purchased by the Customer from Heraeus under separate purchase agreements provided that Heraeus accepts a corresponding order, and further subject to applicable rule or law.
- d) Holding the precious metal balance in the precious metal weight account at Heraeus in [city where Client is located].
- e) Transfer to other weight accounts subject to Heraeus's consent expressed in compliance with applicable rule or law. Any costs resulting from such transfer will be notified to the Customer prior to the transfer.

10 Provision of Securities for the Benefit of Heraeus

10.1 Heraeus and the Customer agree that Heraeus shall have a lien over a) the Refining Material, b) the precious metals recovered therefrom and c) the credit items and all balances standing to the credit of the Customer on the Customer's precious metal weight

account referred to in Section 7 above (together "**the Assets under Lien**") in order to secure any and all claims which Heraeus may have against the Customer in law arising from the business relationship between the Customer and the Heraeus. The foregoing lien shall come into being as soon as the Refining Material has been delivered to Heraeus, the precious metals are available or the credit items or the balances in favour of the Customer have been created in the precious metal weight account, as the case may be.

10.2 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 precious metal weight account only if and to the extent that the aggregate value of these precious metals exceeds the sum total of all claims which the Heraeus may have against the Customer arising from the business relationship between the Customer and the Heraeus. In the event of termination of any refining contract by Heraeus or in the event that the Customer files for insolvency or business rescue or that insolvency proceedings are instituted against the Customer or its assets are attached in execution, Heraeus shall be entitled, but not obliged, without first obtaining any order of court, to the extent permissible in law, to cause all or any of the Assets under Lien to be sold either by public auction or private treaty, provided that the Heraeus has given the Customer not less than seven days' written notice of any such sale, and to use any money received from the sale of any of the Assets under Lien to satisfy any obligations which the Customer may have towards the Heraeus. If the sale proceeds exceed Heraeus's claims against the Customer, an amount equal to such excess shall be paid by the Client to the Customer.

10.3 Heraeus may, at any time, by agreement set off its own claims (whether for money or the delivery of precious metals) against claims of the Customer (whether for money or the delivery of precious metals).

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 as follows:

- Gold: based on the P.M. price per troy ounce published by the London Bullion Market Association ("LBMA") in Euro on www.lbma.org.uk (LBMA Gold Price),
- Silver: based on the price per troy ounce published by the LBMA in Euro on www.lbma.org.uk (LBMA Silver Price),
- Platinum and palladium: based on the P.M. price per troy ounce published in Euro on www.lppm.com (LBMA Platinum/Palladium Price),
- Iridium, rhodium and ruthenium: based on the base price for London published on 15:00 CET in US Dollar by Johnson Matthey Plc,

in each case on the day of dispatch of the declaration of set-off.

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 ZAR, these currencies shall be converted into ZAR at the ZAR foreign exchange reference rate determined by HSBC Johannesburg on the day of dispatch of the declaration of set-off.

11 Force Majeure

Both parties agree that an event of force majeure will also be deemed to exist if Heraeus can prove (a) that the Refining Material provided by the Customer cannot be homogenized and/or sampled using the methods customarily applied by Heraeus and/or (b) that Heraeus production plants that are essential for refining become partly or fully inoperative due to reasons that could not be foreseen by Heraeus and/or (c) that production plants are permanently or temporarily inoperative due to the incorrect specification of Refining Material. Each party will exercise reasonable commercial efforts to resolve any force majeure event as promptly as practicable.

12 Representations of the Customer

The Customer represents and warrants

- that it is the owner of the Refining Material offered for refinement or for purchase or that it has the full right of disposal over such Refining Material, and that the Refining Material is free from any third-party claims or liens; and
- that it will carry out all refining orders or sales transactions in its own name and for its own account and that it will not act as undisclosed agent for third parties in connection with any transaction between the Customer and Heraeus; and
- that it holds a refining licence, a jeweller's permit or other licence, permit or certificate pursuant to the Precious Metals Act, 2005; and
- that the Refining Material offered for refinement or for purchase is not linked to any unlawful act, nor does it contain any conflict minerals as defined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; and
- that the refining order is capable of being executed as scheduled in accordance with the Precious Metal Act, 2005; and
- that it will act in compliance with all statutory provisions that are applicable in connection with the placement and the execution of refining orders, the sale of Refining Material and the delivery of Refining Material; and
- the information and data provided by it, e.g. in the Code of Conduct for Heraeus Precious Metal Suppliers or in the Materials Questionnaire (if requested by Heraeus), are correct and complete and the Customer hereby acknowledges that the information and data so provided by it shall constitute a substantial factor for Heraeus's decision to accept or purchase the Refining Material.

13 Termination Rights of Heraeus

Without prejudice to any rights which the Heraeus may have in law, in terms of this Agreement or in terms of any other agreement between the parties, Heraeus may terminate any refining contract with immediate effect (or rescind from the purchase of the Refining Material) by giving written notice to that effect to the Customer if:

- it is revealed that the documentation regarding the Refining Material provided by the Customer was incorrect or incomplete in any material respect; or

- the Refining Material could not be successfully homogenized or sampled using the methods customarily applied by Heraeus or if a successful homogenization or sampling is deemed unlikely; or
- Heraeus in its sole discretion concludes that the refining is not economically viable (i.e., the refining costs are higher than the value of the precious metals expected to be recovered); or
- the refining order cannot be executed as scheduled in accordance with the Precious Metal Act, 2005; or
- Heraeus obtains factual information which justifies the suspicion that the Refining Material is not delivered or purchased in accordance with applicable rules or law (e.g. that the delivered Refining Material could result from or be related to a criminal offence, or that the refining transaction itself could be part of a criminal offence, or that the Customer could be involved in money laundering activities and/or the concealment of stolen goods; or
- a representation made by the Customer pursuant to Section 12 is found to be incorrect or incomplete in any material respect or the Customer fails to rectify a representation within a reasonable grace period where applicable; or
- the Customer files for insolvency or business rescue or insolvency proceedings are instituted against the Customer or its assets are attached in execution.

Further rights of termination and rights of rescission of Heraeus shall remain unaffected by the preceding provision.

In the event of a termination or rescission by Heraeus of any refining contract or a purchase of Refining Material, Heraeus shall return the Refining Material to the Customer in the then current condition at the Customer's risk and expense. The Customer shall not be entitled to assert any claims for compensation or damages against Heraeus due to the termination or rescission and/or the return of the Refining Material.

14 Liability

Each party shall be liable to the other party for

- damages resulting from injuries to life, limb or health that were intentionally or negligently caused by it or its legal representatives or vicarious agents to the other party;
- damages to property (with the exception of the Refining Material) resulting from intentional or negligent acts caused by it or its legal representatives or vicarious agents to the other party.

For loss or damage of Refining Material that has been delivered to Heraeus without written consent or with incorrect or incomplete documentation, Heraeus shall be liable only in the case of gross negligence or intent for an amount up to, but not exceeding, the Precious Metal Credit determined on the agreed date of metal availability.

If the Refining Material has been delivered to Heraeus with written consent and with correct and complete documentation, Heraeus shall be liable for negligent damage to, or negligent loss of, the Refining Material caused within its area of responsibility for an amount up to, but not exceeding, the amount of the Precious Metal Credit determined on the agreed date of metal availability.

Heraeus shall not be liable for consequential loss or damage, indirect, special or punitive damages, loss of profits or for pure economic loss.

If Heraeus entrusts subcontractors with the refinement of the Refining Material, Heraeus shall only be liable for the proper selection of an appropriate subcontractor as well as for grossly negligent or intentional violations of duty on the part of the subcontractor. Any liability of Heraeus for the selection of subcontractors shall be excluded if the Customer has proposed or demanded a certain subcontractor.

15 Applicable Law and Arbitration

15.1 These Terms shall be exclusively governed by, and construed in accordance with, South African law. The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) shall be excluded.

15.2 Any disputes arising from or in connection with this agreement shall, if so required by either party, by giving notice to that effect to the other party, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator appointed by the parties and, failing agreement between the parties on the appointment of the arbitrator, by AFSA. There shall be no right of appeal as provided for in Article 22 of the aforesaid rules. The language of of the arbitration shall be English and the venue shall be Johannesburg.

16 Severability, Written Form

16.1 Should any provisions of these Terms (including the parate executie terms in Section 10) be or become ineffective or impracticable, this will not affect the legal effectiveness of the remaining provisions.

16.2 The parties agree on the written form. No waiver or modification of this written form requirement will be valid or binding unless executed in writing.