

# Heraeus Romania - General Terms of Sale and Delivery 04/2017

## 1 Scope of Application

1.1 All sales, deliveries and services (hereinafter collectively the "Services") of Heraeus Romania and its affiliated companies domiciled in Romania ("Heraeus") are exclusively subject to the following General Terms of Sale and Delivery. Customers' general terms and conditions of business which deviate from these General Terms of Sale and Delivery or from the law will not be accepted, and they will also not become part of a contract if Heraeus accepts or executes orders from the customer in awareness of the customer's opposing or deviating terms and conditions of business.

## 2 Subject Matter and Scope of Services (Offers, Samples, Guarantees, Conclusion of Contracts)

2.1 All offers of Heraeus are nonbinding and without engagement unless specifically agreed otherwise, art. 1191 of the Romanian Civil Code ("Civil Code") being not applicable. Contracts shall be deemed concluded only after Heraeus has issued a written order confirmation, effected delivery of the goods ordered or performed the Service.

Heraeus shall be generally under no obligation to verify the correctness of the information provided by the customer upon which Heraeus' offer or order confirmation is based, and Heraeus shall also not be obligated to investigate if the execution of the customer's order based on such information infringes any third-party property rights. The customer will be advised of all risks which are identified by Heraeus.

2.2 The data and information included in data sheets, brochures and other promotional and information material of Heraeus serve solely as a guideline and become a binding part of a contract only upon the express written consent of Heraeus.

2.3 Characteristics and properties of samples and specimens are only binding if expressly so agreed.

2.4 Information about the quality, condition and (shelf-)life of products shall be deemed to be guarantees only if expressly designated as such. The same applies to the assumption of a procurement risk.

2.5 Unless otherwise agreed in writing, Heraeus will deliver products within the tolerances admissible under the relevant Romanian or European technical standards, in particular DIN, VDE, EN ISO or similar standards.

2.6 Technical changes which are required for manufacturing reasons, or which are necessary due to legislative changes, or which serve the product update and maintenance, shall be admissible if they are reasonable for the customer.

## 3 Delivery, Delivery Periods, Packaging, Passing of the Risk

3.1 The type and scope of Heraeus' Services and the delivery periods are determined by the written order confirmation of Heraeus. Heraeus shall be entitled to the partial performance of Services if this is reasonable for the customer.

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

3.2 The delivery period commences to run only after all issues which are essential for the performance of the contract have been clarified with the customer and after the customer has performed all essential acts incumbent on him which are required for the performance of the contract by Heraeus. In particular, the delivery period does not commence to run until Heraeus has received all information from the customer which is required to effect delivery, or until the customer has furnished proof that, if required, he has opened a letter of credit, effected prepayment or provided a security, as agreed in the contract. The delivery period will be interrupted by subsequent changes requested by the customer. After agreement about the desired changes has been achieved, the delivery period re-commences to run.

3.3 Acts of God, labor disputes, riots, governmental acts and similar circumstances beyond the control of Heraeus (or any other force majeure events, within the meaning of art. 1351 para. 2 of the Civil Code) release Heraeus from its obligation to perform a contract for so long as and to the extent that the effects of such force majeure circumstances persist. In case that such events or circumstances ultimately impede the fulfillment of Heraeus' obligations, Heraeus shall be released from any liability towards the customer. This applies also if such force majeure circumstances occur to sub-suppliers of Heraeus or if they occur at a point in time at which Heraeus has already been in default. Heraeus will inform the customer of the commencement and of the end of such hindrances to the performance of the Services without delay.

3.4 The products of Heraeus are generally unpacked. If the customer desires packaging, the costs will be borne by the customer.

3.5 Heraeus delivers 'ex factory'/'ex works' (Incoterms 2010). If Heraeus solely organizes the transport, the costs of dispatch and the costs of transport insurance will be borne by the customer.

3.6 The price risk (i.e. the risk of accidental loss or accidental deterioration) shall pass to the customer at that point in time at which the goods are placed at the customer's disposal at the factory/works from

which delivery is effected, even if Heraeus has accepted to perform additional services such as loading or transportation of the goods.

If the performance of a Service is delayed for reasons within the customer's responsibility, the risk shall pass to the customer upon receipt of a notification that the Service is ready to be performed. In such case, Heraeus will be permitted to invoice the goods to the customer as having been delivered, and to store the goods at the customer's cost and risk. Upon request of the customer, Heraeus will insure these goods against theft and damage from breakage, transport, fire and water at the customer's cost.

#### **4 Prices, Payment, Default**

4.1 The prices quoted by Heraeus are exclusive of the statutory value-added tax, outer packaging, shipping charges and insurance costs ('ex works', Incoterms 2010).

4.2 Invoices are due for payment immediately upon receipt and without any deductions. Cheques will be accepted on account of performance only. The customer agrees to the electronic transmission of the invoice.

4.3 Heraeus charges interest for default in payment at the rate of eight (8) percentage points above the applicable reference interest rate of the National Bank of Romania (Art. 3 para. 2<sup>1</sup> of the Ordinance 13/2011). The right to furnish proof of a higher or further damage of any nature caused by default remains reserved.

4.4 Heraeus shall not be obligated to perform the contract for so long as the customer fails to perform his own obligations according to contract, including his obligations from other contracts with Heraeus and, in particular, if the customer defaults in the timely payment of invoices due.

4.5 The customer may offset counterclaims or withhold payment based on such counterclaims only if such counterclaims are uncontested in writing or non-appealable and are not subject to art. 1618 para. 1 Civil Code. In this case, Heraeus has the right to raise claims for any damages and to apply point 4.3 above accordingly, until the customer fulfills its payment obligation.

4.6 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 perform outstanding Services 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, irrespective of the term of any bills of exchange, and demand securities.

4.7 Subject to evidence of a higher damage, Heraeus will charge 2.50 € for the second and each further reasonable reminder.

4.8 If, despite a reasonable time limit, a Service which is ready for acceptance is not fully accepted or is accepted too late through no fault of Heraeus, Heraeus will place the goods in storage at the customer's cost and risk. For such storage Heraeus will charge 0.5% of the invoice amount for each month of the delay in acceptance.

#### **5 Warranty, Duties of the Customer regarding Claims for Defects by his own Customers;**

##### **Liability and Damages**

5.1 Slight deviations from the agreed or standard quality do not constitute a defect in a product or Service. General information on the use of a product or examples for the application of a product given by Heraeus in product brochures or other advertising media do not release the customer from a careful inspection of the delivered product for its fitness for the customer's particular purpose of use. The customer's special requests regarding the particular use of a product shall only be authoritative if Heraeus has confirmed to the customer in writing at the time of conclusion of the contract that the product delivered is fit for the customer's intended purpose of use.

5.2 The customer shall notify Heraeus of all claims for defects which are asserted by his own customers and which relate to Services of Heraeus within 2 (two) working days as of the defect's detection, otherwise the customer's claims for defects against Heraeus will be excluded. In addition, the customer shall preserve evidence in the requisite form and provide such evidence to Heraeus.

Heraeus may reclaim from the customer a product complained of as defective (including any existing supporting documents, samples and packing slips) for investigation of the defect. The customer's failure to comply with this reasonable request will result in the exclusion of the customer's claims for defects or incompleteness of Service. The same applies to any claims for defects which are asserted against the customer by his own customers and which relate to Services of Heraeus.

5.3 For defects in a product, Heraeus' obligation to perform the contract shall, at its choice, consist of subsequent performance by remedy of the defect or delivery of a fault free product. The customer will be entitled to cancel the contract or to reduce the purchase price in accordance with the statutory provisions only if the subsequent performance by Heraeus has failed twice or is unreasonable and the defect complained of is not merely a minor defect. Claims for damages are governed by the provisions in clause 5.6 hereof.

5.4 The compensation of any loss or damage is excluded if and to the extent that such loss or damage is caused by the improper use, modification, assembly, installation and/or operation of the products of Heraeus, or by defective instructions of the customer, and not by a fault on the part of Heraeus. The liability of Heraeus for defects in materials which are supplied by the customer and processed by Heraeus is excluded if such defects are caused by the characteristics and properties of the materials so supplied. If defects in the materials supplied by the customer should render these materials unusable during their processing by Heraeus, the customer will nevertheless be obligated to reimburse Heraeus for its processing expenditure.

5.5 Any and all claims against Heraeus from the express assumption or acceptance of a guarantee, warranty or a procurement risk, or from the culpable injury to the life, body or health of any person, as well as any claims under the Product Liability Law no. 240/2004 (ProdLaw) and any other claims arising from a willful or grossly negligent breach of duty by Heraeus become statute-barred in accordance with the legal provisions. Above and beyond the foregoing, any claims for material defects and defects of title become barred by the statute of limitations after twelve (12) months from the passing of the risk.

5.6 Heraeus will assume unlimited liability in cases where Heraeus has expressly assumed a guaranty/warranty or a procurement risk, in the case of a culpable injury to the life, body or health of any person, for claims under the ProdLaw, and for other willful or grossly negligent breaches of duty by Heraeus. In the case of slight or ordinary negligence and damage to property or pecuniary losses caused thereby, Heraeus will assume liability only for its breach of essential contractual duties the performance of which is indispensable for the proper fulfillment of the contract and the performance of which the customer must be able to specifically rely upon; however, such liability of Heraeus is limited to the damage which is typical of the contract and which was foreseeable at the time of contracting. The liability of Heraeus for delay is limited to 0.5% of the value of the Service in delay per each completed week of such delay, up to a maximum rate of 5% of the said value. Any further liability for damages is excluded, irrespective of the legal nature of the claim asserted.

5.7 The foregoing limitations of liability apply on the merits and in terms of amount also to Heraeus' legal representatives, agents and employees and/or other persons in Heraeus' services.

## **6 Reservation of Title**

6.1 Heraeus retains title to all products delivered until the customer has fully satisfied all of his payment obligations from the business relationship

with Heraeus. This applies also if payments are made in satisfaction of specially designated claims, including claims from cheques and bills of exchange, from open bills or current account.

6.2 The customer shall have the right to resell, process, mix, blend or combine the goods subject to reservation of title with other items during his ordinary course of business until revocation by Heraeus, which revocation may be declared at any time and without giving reasons. A resale of the goods subject to reservation of title within the meaning herein defined extends also to the installation of such goods in ground and buildings, or their installation in facilities connected to buildings, or their use for the performance of other contracts.

6.3 The processing or transformation of the goods subject to reservation of title is made for Heraeus as the manufacturer and owner over the materials within the meaning of art. 598 Civil Code, without resulting in any obligation on the part of Heraeus. The processed or transformed goods shall constitute goods subject to the reservation of title within the meaning of these General Terms of Sale and Delivery. If the goods subject to reservation of title are processed or inseparably blended/combined with other items which are not owned by Heraeus, Heraeus acquires a co-ownership of the resulting new item in the ratio of the invoice value of the goods subject to reservation of title and the replacement value of the other items used at the time of such processing or blending/combining. If the goods subject to reservation of title are combined or inseparably blended with other items not owned by Heraeus into a uniform item which is to be regarded as main item, the customer hereby assigns to Heraeus a share of co-ownership which is proportionate to the customer's ownership of the main item. Heraeus hereby accepts this assignment. The customer will hold the property so created on behalf of Heraeus free of charge.

6.4 The customer shall insure the goods subject to reservation of title at his own cost against all standard risks, in particular against fire, burglary and water hazards, handle these goods with care and store them properly.

6.5 In the event of a resale of the goods subject to reservation of title by the customer, the customer hereby immediately assigns to Heraeus the purchase price claims against his own customers arising from such resale and undertakes to immediately provide Heraeus with the relevant debts instruments and any other relevant documents attesting the existence of the price claim. If the customer resells the goods subject to reservation of title together with other items not delivered by Heraeus, the foregoing assignment applies only in the amount of the value of the goods subject to reservation of title which is specified in the invoice of Heraeus. In the case of a

resale of items in which Heraeus has a co-ownership pursuant to clause 6.3, such assignment applies in the amount of Heraeus' co-ownership. The assigned claims serve as security in the same scope as the goods subject to reservation of title. If an assigned claim is included in a current account, the customer hereby immediately assigns to Heraeus a balance which corresponds to such claim from current account. Heraeus hereby accepts the said assignment of claims.

6.6 The customer shall have the right to collect, within his ordinary course of business, the claims assigned to him by Heraeus until revocation by Heraeus, which revocation may be declared at any time and for no specific reason; this collection right becomes automatically extinct without revocation as soon as the customer defaults in any of his payments to Heraeus. If payment is made by direct debiting, the customer will ensure by prior agreement with his bank that the amounts received are exempt from the bank's lien and that he is at all times able to meet his obligation to transfer his proceeds to Heraeus. At the request of Heraeus, the customer will inform his own customers of the assignment of future claims to Heraeus and provide Heraeus with any and all information and documentation which is required for the assertion of these claims.

6.7 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 its own choice at the request of the customer.

6.8 Above and beyond the foregoing, the customer is not entitled to make any dispositions in respect of the goods subject to reservation of title (liens, pledging of security interests or other assignments in respect of the claims specified in clause 6.5). In the event of an attachment or seizure of the goods subject to reservation of title, the customer will point out that these goods are the property of Heraeus and will notify Heraeus of such attachment or seizure without delay, also in writing.

6.9 If the customer is in default of payment and a grace period fixed by Heraeus has elapsed without payment being effected, Heraeus is entitled to take back the goods subject to reservation of title also if Heraeus has not rescinded the contract.

## **7 Weight Accounts for Precious Metals**

7.1 In the commercial intercourse involving precious metals, Heraeus maintains weight accounts. The precious metal stocks of the individual account holders are not stored separately. All account holders together form a community of proprietors which is managed by Heraeus.

7.2 Each account holder acquires by accession a co-ownership of the total existing stock of precious metals, which is expressed in and limited to the troy weight of each precious metal credited to the account holder's account. In case of a purchase or sale

of precious metals, the passing of title is effected by a credit or debit entry in the respective weight account.

7.3 The weight accounts for precious metals are kept as current accounts. 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 prior to the elapse of 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.

## **8 Choice of Law, Place of Performance, Jurisdiction**

8.1 These General Terms of Delivery and any agreement between Heraeus and the customer shall be governed by and construed in accordance with the law of Romania, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

8.2 The place of performance for the Services of Heraeus is the factory/works from which delivery is effected; the place of performance for the customer's payments is Heraeus' registered place of business.

8.3 The jurisdiction of the courts of justice, also for actions on cheques and bills of exchange, remains with the courts from the registered place of business of Heraeus. However, Heraeus shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Romania or under the laws of the country in which the customer has his registered place of business.