

## Heraeus Hong Kong Refining Conditions (09/2015)

**1. Scope of Application:** These General Terms and Conditions (these "Terms"), together with the quotation provided by Heraeus ("Quotation"), govern the refinement by Heraeus Limited ("Heraeus") of precious metal-containing material ("Refining Material") and contain all agreements and understandings between the parties with regard to any refining contracts to be concluded between Heraeus and the Customer. Heraeus hereby rejects any terms and conditions of the Customer which deviate from these Terms or from applicable rule or law.

**2. Delivery of the Refining Material:** The Refining Material shall be delivered "DDP", Incoterms 2010 Heraeus Ltd., Heraeus Technology Centre, 30 On Chuen Street, On Lok Tsuen, Fanling, Hong Kong, at the Customer's risk and expense. Upon delivery, Heraeus is not obliged to open the containers or to check the delivered material for consistency with the the material description provided by the Customer. If Heraeus discovers such inconsistency at any point in time, Heraeus must inform the Customer only of it if Heraeus refuses to perform the refining based on these inconsistencies.

**3. Title to Refining Material:** The Customer will remain the owner of the Refining Material and the precious metals to be refunded pursuant to Section 7. The refinement will be executed by Heraeus on behalf of the Customer. 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 materials removed prior to refining in consultation with the Customer shall lapse upon removal of these materials.

**4. Due Diligence:** 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.

**5. Settlement Weight:** Heraeus will determine the net incoming weight. If necessary, Heraeus will pretreat and homogenize the Refining Material. The weight of the homogenized material less (a) the weight of the retained samples and (b) any weight loss from drying and melting will be the settlement weight relevant for final settlement ("**Settlement Weight**").

**6. Assay of the Refining Material:** Based on Heraeus' long-time experience, Heraeus will determine the settlement basis for final settlement ("**Settlement Basis**") on the samples in a globally consistent and uniform procedure. Only the precious metals set forth in the Quotation ("**Covered Precious Metals**") will be included in Heraeus' statement of Settlement Basis (and subsequently refunded to the Customer).

**7. Precious Metal Credit:** The Precious Metal Credit (in the agreed unit of weight) for each Covered Precious Metal will be determined as follows:

$$\text{Settlement Basis in } \frac{\%}{100} \times \text{Return Rate in } \frac{\%}{100} \times \text{Settlement Weight in the agreed unit of weight}$$

The Return Rates (and, if agreed, a Minimum Deduction) are set forth in the Quotation.

**8. Credit of Refunable Metals; Further Options:** Heraeus will credit the Precious Metal Credit to the Customer's precious metal weight account maintained at Heraeus, upon which the refining order will be deemed performed by Heraeus.

With regard to the precious metals credited to its weight account, Customer may – upon agreement with Heraeus - (i) hold the precious metals in the precious metal weight account, (ii) sell the precious metals to Heraeus under a separate purchase agreement at the purchase price offered by Heraeus, (iii) require transfer to other weight accounts or (iv) require physical return (EX Works Heraeus) in the form and at the

manufacturing costs agreed with Heraeus and in following quality:

Platinum	plate & sponge, 99.95 % *
Gold	bar & granules, 99.99 %
Silver	granules, 99.95 %
Palladium	plate & sponge, 99.95 %*

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

**9. Lien:** Heraeus and the Customer agree that Heraeus shall be granted a lien on the Refining Material, the precious metals recovered therefrom and the credit items and the balances in favour of the Customer on the Customer's precious metal weight account in order to secure all sums of whatever nature due and payable by the Customer to Heraeus arising from all the business dealings with the Customer. The foregoing lien shall be created 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 weight account. It is hereby agreed that by the Parties that the foregoing lien on the Refining Material and Precious Metals is enforceable by sale by Heraeus.

**10. Representations of the Customer:** The Customer represents and warrants that (i) it is the sole legal and beneficial owner of or has the the full right of disposal over the Refining Material, (ii) the Refining Material is free from any third-party claims or liens, (iii) it will not act as undisclosed agent for third parties, (iv) the Refining Material does not contain any conflict minerals as as contemplated in either the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, or Section 1502(e)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as applicable, (v) the Refining Material is delivered in accordance with applicable rules or law (e.g. that the delivered Refining Material does not result from or is related to a criminal offence, and that the refining transaction itself is not part of a criminal offence, and that the Customer is not involved in money laundering activities), and (vi) the information and data provided by Customer are correct and complete.

**11. Extraordinary Termination Rights of Heraeus:** Heraeus may, without incurring any liability whatsoever, terminate any refining contract with immediate effect in case of good cause, in which case Heraeus shall return the Refining Material to the Customer in the then current condition at the Customer's risk and expense. Good cause shall be given, e.g., if (i) it is revealed that the Customer provided incorrect or incomplete documentation, information or representation which was a substantial factor for Heraeus' decision to accept the Refining Material, (ii) Heraeus concludes that the refining is economically unviable (i.e., the refining costs are higher than the value of the precious metals expected to be recovered), (iii) the refining order cannot be executed as scheduled in accordance with applicable laws or (iv) Heraeus obtains knowledge of facts that justify 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).

**12. Limitation of Liability:** For loss or damage of Refining Material, Heraeus shall be liable only in the case of negligence or intent for an amount up to, but not exceeding, the Precious Metal Credit determined on the agreed date of metal availability. Under no circumstances, even in cases of negligence other than gross negligence or intent, Heraeus shall be liable for the replacement of lost profits or of any pure financial losses.

**13. Applicable Law, Court of Arbitration:** These Terms shall be exclusively governed by, and construed in accordance with, the laws of Hong Kong. The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) shall be excluded.