

## **1. Scope**

1.1 All installation, service, maintenance and repair work by Heraeus Noblelight America LLC ("Heraeus") for the customer is subject to the following general terms and conditions (the "General Installation and Service Conditions") only. These General Installation and Service Conditions apply to both the one-time installation, service, maintenance and repair work performed under a single Service Order and to the regular work to be performed under a Service Level Agreement.

1.2 General terms and conditions of the customer which deviate from or supplement these General Installation and Service Conditions shall be considered proposals that may become part of a contract only if and to the extent that Heraeus expressly agrees to their applicability in writing. Such general terms and conditions of the customer shall in particular not become part of a contract by the fact that Heraeus performs installation, service, maintenance and repair work for the customer without expressly rejecting the terms and conditions of the customer.

## **2. Remuneration**

2.1 The remuneration for the services provided by Heraeus will be agreed in the single Service Order or, as applicable, in the Service Level Agreement.

2.2 If the single Service Order or, as applicable, the Service Level Agreement provides for a lump sum remuneration of the services provided by Heraeus, payment of the agreed lump sum shall constitute full and final settlement and discharge of any and all services ordered by the customer. Payment of such lump sum shall in particular constitute full and final settlement and discharge of any and all costs of materials and tooling, of any and all travel and transport expenses, and of any and all costs of operating supplies and auxiliary materials.

2.3 If no lump sum remuneration for Heraeus's services is agreed in the single Service Order or if Heraeus provides services beyond the services covered by the agreed lump sum remuneration, the following applies:

2.3.1 The remuneration for working time is subject to the hourly rates of Heraeus in force at the time.

Waiting times outside the responsibility of Heraeus are charged as working time. Traveling time starts and ends at the location of the respective Heraeus service site.

2.3.2 The remuneration for spare parts and expendables and for operating supplies and auxiliary materials is subject to the list prices of Heraeus in force at the time.

2.3.3 For all work and services performed outside the plant of Heraeus, the costs of travel to/from the Heraeus plant, the costs of overnight accommodation and meals as well as other expenses related to such travel are charged as actually incurred. Travels by car are charged at a flat rate mileage. Travels by train and by air are subject to the provisions of the Heraeus Global Travel Policy in force at the time.

2.4 All invoices are due and payable without any deductions immediately after receipt into a bank account named by Heraeus. The customer agrees to the electronic transmission of the invoice.

2.5 The right to furnish proof of a higher or further damage caused by default remains reserved.

## **3. Services of Heraeus**

3.1 Heraeus performs the services agreed in the single Service Order or, as applicable, in the Service Level Agreement with qualified personnel having the professional knowledge and skills required by applicable law for the performance of such services.

3.2 The following provisions apply to particular services of Heraeus only:

### **3.2.1 Installation/Start-Up**

If the customer entrusts Heraeus (within the scope of a single Service Order or in connection with a purchase order for products) with the installation/start-up of a system or part of a system, Heraeus will perform the service in accordance with the documentation provided to it. The customer is responsible for the timely provision and availability of the required utilities. Any services exceeding or diverging from the services originally agreed (e.g., additional installation work or work deviating from the documentation) will be performed by Heraeus only after consultation with and a written confirmation (including via e-mail) from the customer. After

completion of the service, Heraeus and the customer will sign an acceptance protocol. The customer is committed to declare acceptance of the work carried out by Heraeus if the functional tests set forth in the documentation have been completed successfully. Acceptance will be deemed to have occurred at the latest upon the system's productive use.

### **3.2.2 Inspection**

If the customer entrusts Heraeus (within the scope of a single Service Order) with the inspection of a system, Heraeus will perform such inspection of the system and, if applicable, with regard to a specific malfunction reported by the customer or a specific defect. Heraeus will inform the customer of the result of the inspection after completion of the inspection. Unless otherwise agreed, the result of the inspection is intended to help the customer in deciding about a repair that may have to be carried out. At the request of the customer, Heraeus will prepare a non-binding estimate of cost of repair of the system. If a repair order is placed, the costs for the preparation of such estimate of cost will be offset against the remuneration for the repair work.

### **3.2.3 Service and Maintenance**

If the customer entrusts Heraeus (within the scope of a single Service Order or under a Service Level Agreement) with the performance of scheduled service and maintenance work, Heraeus will, to the extent possible, also carry out minor overhauls and repairs of the systems to be serviced. Minor overhauls and repairs are activities which increase the service and maintenance work only insignificantly. Any further services (e.g., fault clearance outside the scheduled service and maintenance dates, or larger repairs) will be performed by Heraeus only after consultation with the customer and on the basis of a separate single Service Order, if applicable. After completion of service and maintenance, Heraeus will prepare a service protocol which specifies the service and maintenance work performed and, if applicable, all minor repairs and fault clearances carried out.

### **3.2.4 Repairs**

If the customer entrusts Heraeus (within the scope of a single Service Order) with the repair of a system or with the correction of a malfunction, Heraeus will use commercially reasonable efforts to identify the cause of the malfunction or defect and remedy such malfunction or defect after its detection. The objective is to restore the functioning of the system under repair. However, Heraeus cannot assume any responsibility for the successful remedy of a defect or malfunction. After completion of a repair, Heraeus will prepare a work report specifying the work carried out.

3.3 Heraeus performs the services in compliance with the applicable laws and regulations in force, the additional instructions and requirements which may be provided by the customer prior to contract conclusion, especially hazard assessments, manufacturer's information and factory standards as well as any rules or directives separately agreed in the individual case.

3.4 Heraeus will provide the tooling as well as product-specific operating supplies and auxiliary materials ordinarily required for the performance of its services, unless the tooling, the operating supplies and auxiliary materials are provided by the customer within the scope of its contractually agreed duty to cooperate.

3.5 Heraeus will submit or transmit the service protocol or, as applicable, the work report to the customer after completion of the services, however, at the latest together with the invoice.

3.6 The services of Heraeus will be performed by qualified personnel of Heraeus, another Heraeus company, or a certified partner company of Heraeus.

## **4. Obligations of the Customer**

4.1 As the operator of the system, the customer shall observe and abide by the applicable laws and regulations as well as the information and internal policies and guidelines of the system manufacturer. The customer shall grant Heraeus access to the system and provide to Heraeus, at the customer's cost and expense, the transport and lifting gear and the general operating supplies which are required for the performance of the services of Heraeus, as well as the product-specific operating supplies and/or tooling specifically agreed in the single Service Order or, as applicable, the Service Level Agreement. If required, the customer shall make available appropriate auxiliary staff.

4.2 Before placing a single Service Order for the repair of a system, the customer shall provide Heraeus with as detailed information as possible about the malfunction or defect and the operating conditions.

4.3 The customer shall advise the employees of Heraeus of existing hazards and safety rules, and take any and all measures which are required for the protection of these employees.

4.4 If the services to be provided by Heraeus also extend to systems or components thereof which were not delivered by Heraeus, the customer shall provide Heraeus with any and all circuit diagrams, drawings, maintenance instructions and operating manuals of the system manufacturer, with existing hazard assessments, and with any further provisions and instructions which have been separately agreed in the single Service Order or, as applicable, the Service Level Agreement. In the case of scheduled service and maintenance work, the customer shall document and inform Heraeus in a timely manner of any damage, defect, malfunction and other abnormal operating phenomena of the system and of any changes in the operating or ambient conditions.

4.5 The conclusion of single Service Orders for the performance of service and maintenance work and the conclusion of a Service Level Agreement do not release the customer from its obligation for any further or additional service and maintenance in accordance with the system manufacturer's operating manual.

## **5. Acceptance**

5.1 The customer is obligated to accept the services as soon as Heraeus has notified the customer of their completion.

5.2 The customer must report obvious defects to Heraeus promptly in writing but no later than within 10 calendar days after Heraeus's completion of the services. Failure to report an obvious defect in due course results in the exclusion of a claim for such defect by the customer.

5.3 The services shall be deemed accepted also without the customer's express declaration of acceptance when the customer starts the productive operation using the system.

## **6. Warranty, Indemnification, LIMITED LIABILITY**

6.1 Heraeus warrants that: (i) it will perform all services in a competent, workmanlike manner and (ii) the services will be free of defects or errors for a period of 90 days (the "Warranty Period") following acceptance by customer, provided that Customer notify Heraeus in writing of any defects within twenty (20) days of the end of the warranty period.

6.2 **SOLE AND EXCLUSIVE REMEDY.** Heraeus's responsibility for a breach of this warranty and customer's sole and exclusive remedy is limited, at Heraeus's option, to either rework of the defective services or return to customer of monies actually received by Heraeus from customer for those defective services. Heraeus may require inspection of the defective services.

6.3 This warranty extends only to the customer. This warranty does not apply to, and Heraeus assumes no responsibility for, damage or defects due to any cause not amounting to a breach of this warranty, including, but not limited to, damage or defects arising as a result of misuse, improper installation by customer's personnel or subcontractors, accident, neglect, modification, repair by customer, adverse conditions, and demands exceeding performance levels required by applicable specifications by Heraeus.

6.4 THIS WARRANTY IS EXCLUSIVE AND MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO MODIFICATION OR ALTERATION OF THE FOREGOING WARRANTY AND LIMITATION OR REMEDIES PROVISIONS SHALL BE VALID OR ENFORCEABLE UNLESS SET FORTH IN A WRITTEN AGREEMENT SIGNED BY HERAEUS AND THE CUSTOMER.

6.5 Customer shall indemnify and hold harmless Heraeus from and against any and all liability, damages, costs, losses and expenses arising out of or in connection with any personal injury, including death, or any damage to property or business which may be caused by customer's breach of the General Installation and Service Conditions, a Single Service Order, or a Service Level Agreement, or use, operation, or failure to operate any parts delivered hereunder, except to the extent caused by the gross negligence or willful misconduct of Heraeus.

6.6 IN NO EVENT SHALL HERAEUS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR

CONSEQUENTIAL DAMAGES, NOR SHALL IT BE LIABLE FOR DAMAGES FOR LOSS OF PROFITS, REVENUE, OR USE INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, OR TORT, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HERAEUS'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS SALES CONTRACT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE GOODS.

## **7. Reservation of Title**

7.1 Heraeus retains title to, and ownership of any delivered products (e.g., the spare parts and expendables) until full payment of all claims from a single Service Order or a Service Level Agreement.

7.2 In the event of seizures of delivered products or other acts or interventions by third parties, the customer must point out that the products are the property of Heraeus and inform Heraeus immediately in writing so that Heraeus can enforce its ownership rights. As long as the customer is not in default of payment, the customer shall be entitled to use the spare parts and expendables which are subject to reservation of title in its ordinary course of business. However, the customer shall not be entitled to pledge, or to assign by way of security, any spare parts and expendables subject to reservation of title.

## **8. Term, Termination**

8.1 The initial term of a Service Level Agreement is as set forth in the particular Service Level Agreement. Thereafter, the particular Service Level Agreement will be automatically renewed for successive additional periods of 12 months each unless it is terminated by either party upon three months' prior written notice effective as of the expiry of the initial term or each renewal term.

8.2 The right of either party to terminate the relevant Service Level Agreement by extraordinary notice for cause remains unaffected. For the avoidance of doubt, the sale, relocation or closing down of the system(s) concerned in whole or in part is not considered as cause for an extraordinary termination.

8.3 The single Service Orders are terminable in accordance with the statutory termination provisions.

## **9. Final Provisions**

9.1 Acts of God, labor disputes, riots, governmental acts, decrees or orders by any federal, state or local authorities or courts, and similar circumstances beyond the control of Heraeus shall release Heraeus from the obligation to perform its contractual duties for so long as and to the extent that the effects of such circumstances persist. Heraeus will inform the customer of the commencement and of the end of such hindrances to the performance of its contractual duties without delay.

9.2 If any provision of these General Installation and Service Conditions should be or become invalid or unenforceable, then this shall be without effect to the other provisions of these General Installation and Service Conditions, which other provisions shall continue in full force and effect. In such case, the parties shall use their best efforts to replace the invalid or unenforceable provision by a legally valid provision which most nearly reflects the economic intent and purpose of the invalid or unenforceable provision. The same shall apply to any gaps which may be contained herein.

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

9.4 These General Installation and Service Conditions and any single Service Order or Service Level Agreement shall be governed by the laws of the State of New York, without giving effect to its conflict of law provisions.