

Heraeus Kabushiki Kaisya - General Terms of Purchase (May 2019)

1. General

All purchase orders (hereinafter referred to as the "**Purchase Orders**") of Heraeus Kabushiki Kaisya (Heraeus K.K.), Sumitomo Fudosan Otawa Building 1F, 2F, 5F, 2-9-3, Otsuka, Bunkyo-ku, Tokyo 102-0012, Japan (hereinafter referred to as "**Heraeus**") regarding the delivery of goods and the provision of services by the seller (hereinafter referred to as the "**Seller**") are subject to the following General Terms of Purchase (the Purchase Order and these Terms and Conditions hereinafter collectively referred to as the "**Purchase Agreement**"). Conflicting terms and conditions presented at any time by Seller will be considered proposals that go into effect only to the extent accepted in writing by Heraeus. Under this Purchase Agreement, Seller agrees to sell and Heraeus agrees to purchase certain goods, products, or services as described in the Purchase Order (the "**Goods**").

2. Orders, Acceptance

A Purchase Order will be deemed accepted by Seller upon the earlier of Seller's (a) written acceptance of the front page of the Purchase Order, (b) shipment of any Goods, or (c) failure to provide written notice of rejection to Heraeus within five business days after Heraeus issues the Purchase Order or instructions. Heraeus may revoke or make any changes to the Purchase Order until accepted by Seller.

3. Quality, Packing and Documentation

3.1 Quality. Seller agrees, represents, and warrants that all Goods supplied under this Purchase Agreement will be manufactured in strict accordance with the applicable Heraeus specifications and requirements. Goods must consist only of new materials, unless otherwise specified.

3.2 Packaging. Goods must be packaged securely, and each shipment must include documentation stating the exact quantities and description of the Goods shipped.

4. Shipping and Delivery

Time is of the essence. Heraeus requires the ordered Goods on the date specified for the purpose of efficiently conducting its operations. Seller must report to Heraeus immediately any anticipated delay in shipment or delivery. Heraeus reserves the right to terminate the Purchase Order in whole or in part, with no liability to Seller, should Seller fail to make deliveries in accordance with the terms of this Purchase Agreement.

5. Inspection

Heraeus reserves the right to inspect and reject any Goods it receives. Defective or non-conforming Goods will be held for Seller's instruction at Seller's risk and, if Seller so directs, will be returned at Seller's expense. Payment for any Goods prior to inspection does not constitute acceptance. Payment, if made, is without prejudice to any and all Heraeus claims against Seller.

6. Change of Manufacturing Process

Seller agrees to provide reasonable prior written notice to Heraeus (i) of any changes to the manufacturing process or manufacturing location of the Goods that may materially affect the fit, form or function of the Goods and (ii) of any plans to discontinue production of any Goods; subject to Heraeus right, however, to make a "final buy" of up to one year's supply of such Goods before Seller discontinues production.

7. Cancellation

Notwithstanding any provision to the contrary, Heraeus may cancel any Purchase Order or terminate this Purchase Agreement by written notice to Seller immediately upon the occurrence of any of the following:

- (1) if Seller has breached, or Heraeus reasonably believes that Seller has breached, any provision hereunder;
- (2) the dissolution of Seller;
- (3) the insolvency, filing of a voluntary or involuntary petition under any law relating to bankruptcy, appointment by a court of a temporary or permanent receiver, trustee or custodian for Seller's business, or an assignment of Seller's assets for the benefit of its creditors; or
- (4) if Seller sells its business to a third party either through a stock or equity ownership transfer or through a sale of substantially all of its assets.

8. Warranty and Indemnity

8.1 Warranty. Seller expressly warrants that all Goods (a) will conform to the description or specifications furnished by Heraeus, (b) will be free from defects in materials, design and workmanship, and (c) will be of merchantable quality for a period of not less than 365 days after delivery to Heraeus. The warranties under this Section 8.1 will survive delivery and cannot be deemed waived either by reason of Heraeus's acceptance of or payment for Goods. Any deviation from the warranties under this Section 8.1 must be approved in writing by Heraeus.

8.2 Warranty Claims. If Seller delivers Heraeus defective or non-conforming Goods, Heraeus may, at its option (a) accept some or all of the Goods with a claim for damages against Seller associated with the defect or non-conformance, (b) reject some or all of the Goods and terminate further deliveries, or (c) at Heraeus's sole option, require Seller to promptly repair or replace the Goods. Heraeus may also fix any defect or non-conformance, with Seller reimbursing Heraeus for the associated costs.

8.3 Returns. If Seller is unable to replace Goods under Section 8.2 within ten days of Heraeus's notice, Heraeus may return such Goods to Seller immediately and Seller must promptly refund to Heraeus all monies paid by Heraeus to Seller for such Goods.

8.4 Non-Infringement. Seller warrants and covenants that the Goods do not and will not infringe or misappropriate the patent, trademark, copyright, trade secret or other intellectual property rights of any third party.

8.5 Infringement Indemnity. Seller shall indemnify, defend and hold harmless Heraeus, its affiliates and their respective officers, directors, employees and agents from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging infringement of any intellectual property rights of a third party by the Goods purchased under this Purchase Agreement. Seller may meet its obligation under this Section 8.5 if Seller obtains a license for Heraeus, its affiliates and their respective customers to continue to use, manufacture, market and sell any product incorporating the purportedly infringing Goods.

8.6 Product Liability Indemnification. Seller shall indemnify, defend and hold harmless Heraeus, its affiliates and their respective officers, directors, employees and agents from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging personal injury or property damage caused by the Goods purchased under this Purchase Agreement.

9. Confidential Information and Property Ownership

9.1 Disclosure. Heraeus may provide to Seller certain information (written and verbal), intellectual property, supplies, drawings, software, specifications, tools, equipment, molds, fixtures and other proprietary items as Heraeus may determine necessary for Seller to fulfill the applicable Purchase Order ("**Confidential Information**"). Confidential Information is Heraeus property and is confidential. Seller undertakes to protect Confidential Information with the same degree of care as it uses for its own confidential information, but no less than reasonable care. Without Heraeus's prior written consent, Seller will not (a) disclose any Confidential Information, including the terms of this Purchase Agreement, except to its employees as necessary for Seller to perform its obligations under this Purchase Agreement, (b) use any Confidential Information except as necessary for Seller to perform its obligations under this Purchase Agreement, or (c) transfer any Confidential Information to a third party.

9.2 Return. Upon completion of the transactions under the applicable Purchase Order, at Heraeus's written direction, Seller must destroy or return any Confidential Information or copies. Seller assumes liability for loss, damage or misuse of any Confidential Information. If Heraeus reasonably requests, Seller must execute a more extensive confidentiality agreement with Heraeus to protect Confidential Information.

9.3 No License. Except as provided in this Purchase Agreement, Heraeus is not granting Seller a license to any Confidential Information.

9.4 Ownership. Heraeus will, at all times, have and retain all rights, title, and interests to all Confidential Information, any other property generated during Heraeus manufacturing activities and any improvements to the Goods made by Heraeus during the manufacturing process. Any improvement of or additions to the Goods by Heraeus are Heraeus's property.

10. Compliance with Laws; Heraeus Code of Conduct

10.1 Compliance with Laws. In filling any Purchase Order, Seller shall comply with all applicable federal, state and local laws, government regulations and orders, including without limitation concerning: (a) manufacture, sale, delivery, or use of the Goods; (b) occupational safety and health; (c) protection of persons and property from death, injury or damage; (d) labor and employment, including equal employment opportunity; (e) tax; (f) export control; (g) the environment and the use, handling, storage, labeling, and disposal of toxic or hazardous materials; and (h) money laundering, bribery, anti-terrorism, trade embargos, and economic sanctions.

10.2 Heraeus Code of Conduct. Heraeus has adopted certain principles for the responsible conduct of its business as expressed in the Heraeus Code of Conduct, a copy of which has been made available to Seller. Seller shall perform under this Purchase Agreement in accordance with the Heraeus Code of Conduct.

10.3 Compliance Indemnification. Seller shall indemnify, defend and hold harmless Heraeus, its affiliates and their respective officers, directors, employees and agents from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging Seller's conduct which is in breach of the covenants under this Section 10.

11. Governing Law, Arbitration and Venue

11.1 Governing Law. This Purchase Agreement will be construed in accordance with and governed solely by the laws of

Japan, without regard to its conflict of laws rules.

11.2 Mediation and Venue. Heraeus and Seller will first endeavor to resolve through good faith negotiations any dispute arising under or relating to this Purchase Agreement. If a dispute cannot be resolved through good faith negotiations within a reasonable time, any actions brought under this Purchase Agreement will have venue and jurisdiction solely in the Tokyo District Court.

12. Miscellaneous

12.1 Entire Agreement. This Purchase Agreement, and the documents referenced in this Purchase Agreement, including any specifications, constitute the entire understanding and agreement between Heraeus and Seller, and supersede all prior oral or written negotiations and agreements with respect to the subject matter of this Purchase Agreement. Conflicts in terms will be resolved in the following order of precedence: (a) customized terms of the Purchase Order; (b) this Purchase Agreement; and (c) any written agreement signed by authorized representatives of Heraeus and Seller expressly amending this Purchase Agreement. No modification, change or amendment of the Purchase Agreement will be valid unless made in writing and signed on behalf of Heraeus and Seller by its duly authorized officer or representative.

12.2 Severability. If any provision of this Purchase Agreement is prohibited by law or held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

12.3 Waiver. No failure by Heraeus or Seller to enforce or take advantage of any provision under this Purchase Agreement will constitute a waiver of the right subsequently to enforce or take advantage of such provision.

12.4 No Assignment. Neither Heraeus nor Seller may assign this Purchase Agreement to a third party without the prior written consent of the other party except, with prior notice: (a) to an affiliate; or (b) to a third party who will acquire, by sale of assets, merger or otherwise, all or substantially all of the assets of such party. The assigning will remain obligated to perform under this Purchase Agreement notwithstanding such assignment.

12.5 Notices. Unless otherwise noted, all notices or correspondence pursuant to this Purchase Agreement must be sent (or faxed with a follow up copy sent) to the address or number and to the contact on the Purchase Order or to such other address as may be designated by Heraeus.