

Heraeus - General Terms of Delivery 01/2005

- for Commercial Transactions with Business Enterprises -

1 Important Information

1.1 All deliveries of Heraeus in commercial transactions with business enterprises are subject to the following terms of delivery only. In as much as there are gaps in these terms of delivery, the provisions of law shall apply. Customers' general terms and conditions of business which deviate from the following terms of delivery or the provisions of law will not be accepted, and they will also not be accepted by Heraeus in the execution of a contract, in particular by the delivery of goods.

1.2 Heraeus shall only be bound to an offer through a written acceptance, which may take the form of an invoice accompanying the goods. Heraeus shall not check the correctness of the information provided by the customer upon which the offer or order confirmation is based and Heraeus shall also not check if the execution of the customer's order based on such information infringes any third party property rights. Unless the customer informs Heraeus in writing that only a specific make and design of a product is desired, Heraeus will be free to deliver make and design of that product which is technologically most advanced.

1.3 Unless otherwise previously agreed in writing, Heraeus will deliver products within the tolerances admissible under the relevant German or European technical standards, in particular DIN, VDE, EN ISO, etc. Engineering changes which become necessary as a result of changes in the production, for reasons of product management, or by virtue of the law shall be permissible.

2 Delivery

2.1 Unless otherwise agreed upon in writing, deliveries are effected 'ex factory'/'ex works' pursuant to the Incoterms 2000. Only the confirmed time of delivery by Heraeus is binding upon the parties.

2.2 The commencement of a delivery period requires timely receipt of all documents, material and information from the customer necessary for the execution of the contract, as well as all authorizations and permits which may be required and which are to be submitted by the customer to Heraeus with the necessary contents and/or of the quality agreed upon.

2.3 In case Heraeus is unable to perform its delivery obligations due to belated self-supply or forces beyond its control (force majeure), the contract is not terminated but merely suspended until the removal of such impossibilities has made it possible to deliver. This applies also in the case Heraeus has been in default at the time these impossibilities arose. All claims for damages against Heraeus in connection with the aforesaid impossibilities are excluded.

3 Default

3.1 The customer's possible claims for delay or default of contract are excluded in cases of slight negligence by Heraeus' legal representatives, agents or employees.

3.2 The customer's possible claims for delay or default of contract are also excluded if the delay or default of contract is based on the delivery of a defective product and Heraeus performs its contractual duties by subsequent delivery of a faultfree product within a reasonable period of time.

4 Passing of the Risk

4.1 If the product is to be shipped, the risk shall pass at that point of time at which Heraeus has delivered the product to the person in charge of shipping it. In case the delivery is delayed for reasons within the customer's responsibility, the risk shall pass to the customer upon receipt of the notification that the product is ready for shipment.

4.2 Unless otherwise agreed upon in writing, Heraeus shall insure a shipment for its own benefit at the expense of the customer, since under German law title to the goods does not vest in the buyer until he has received and paid for them. No forwarding agent's transport, logistics and storage insurance shall be taken out at the expense of Heraeus.

5 Inspection and Rejection of Goods

5.1 Upon receipt, each shipment shall be inspected for defects, damages and completeness. All complaints shall be promptly reported to Heraeus in writing.

5.2 In case of damage to the goods while in transit, a purchasing merchant must obtain a written damage report from the carrier, and, after immediate consultation with Heraeus, have an insurance adjuster issue a certificate of damage, if Heraeus requires it.

6 Claims for Defects

6.1 For defects in a product delivered Heraeus' obligation to perform the contract shall, at its choice, consist of subsequent performance by remedy of the defect or delivery of a faultfree product. The customer has no right to remedy a defect himself and claim reimbursement of the costs thereby incurred by him. If the subsequent performance by Heraeus should still fail in the second attempt, the customer may reduce the purchase price or, upon the existence of the statutory prerequisites, rescind the contract. Heraeus may reclaim from the customer a product complained of as defective for investigation of the defect. If Heraeus delivers a faultfree product within the scope of subsequent performance, or if the customer rescinds the contract with Heraeus with legal effect, Heraeus may claim restitution and return of the product complained of as defective subject to the provisions of Sections 346 thru 348 of the German Civil Code (BGB). If Heraeus is liable to pay damages on account of a defect by virtue of the law, Heraeus' liability for such damages shall be limited to the extent stipulated in clause 7 hereof.

6.2 The customer's claims for defects become statute-barred after 1 year from the date of delivery/acceptance of the product. The foregoing time limit does not apply to defects which are based on

intent, to defects which are fraudulently concealed, to defects which are based on a deviation or divergence from a guaranty/warranty which Heraeus may have given as well as to defects in fixed constructions or any items delivered which, in accordance with their intended purpose, are customarily used for a fixed construction and which have caused its defectiveness. In all these cases the statutory periods shall be controlling. The foregoing shall be without prejudice to the legal regulations on suspension of the statute of limitations, suspension, and re-commencement of the time limits.

6.3 The products delivered by Heraeus will be free from defects of quality if they are of the condition as agreed in writing between Heraeus and the customer in a specification or in a shipping instruction.

In the absence of such written agreement with the customer, the products delivered by Heraeus will be free from defects of quality if they are of the condition as finally described in the technical data sheets, specifications or drawings of Heraeus, or if they are of a condition which diverges only insignificantly from the agreed/described condition.

The customer's information on the use of a product shall only be authoritative if Heraeus has expressly 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. 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 product delivered for its fitness for the customer's concrete purpose of use.

7 Compensatory Damages

Heraeus will assume liability within the legal limits for damages which are based on a willful act or omission or gross negligence by its legal representatives or senior executives or on a willful act or omission by its agents or other employees as well as for damages from bodily injury. In the case of gross negligence by agents or other employees of Heraeus or in the case of a slightly negligent breach of essential contractual duties which are indispensable for the attainment of the contract purpose and which the customer must therefore be able to rely upon, the liability of Heraeus within the legal limits is limited to such damages the nature and extent of which were foreseeable to Heraeus at the time of the conclusion of the contract. Above and beyond the foregoing, all claims of the customer for compensation of any direct or indirect damage - irrespective of the cause in law and including possible claims for damages from the breach of pre-contractual duties and damages in tort - are excluded.

Contractual penalties or liquidated damages the customer may have to pay to third parties will only be compensated by Heraeus if this has been agreed with the customer in writing beforehand.

The legal liability of Heraeus for the absence of a guaranteed/warranted quality or condition of the product and the liability of Heraeus under the German Product Liability Act of 15 December 1989 remain unaffected.

8 Default in Payment

8.1 Subject to evidence of a higher damage, Heraeus may charge 5.00 € each for the second and each further reasonable reminder. The production of evidence of an absent or minor damage shall be reserved to the customer.

8.2 Heraeus shall be entitled to charge interest for default at the statutory rate, but no less than 10%. The production of evidence of an absent or minor loss of interest shall be reserved to the customer, that of a higher loss of interest shall be reserved to Heraeus.

9 Reservation of Title

9.1 Heraeus retains title to all products delivered until all previous and present contract obligations, negotiable instrument claims, as well as all past and present debts have been satisfied in full. If, in connection with a payment, a liability for Heraeus arises due to any negotiable instrument transaction, then the reservation of title stands until Heraeus is absolved or excluded from all obligations.

9.2 The customer may use the products delivered within the scope of his ordinary and proper course of business prior to full payment of the aforementioned obligations, claims and debts (9.1), unless a prohibition of assignment exists with third parties for the future claims already assigned to Heraeus as set forth in clause 9.3. Pledging of security interests or liens, in as much as Heraeus' rights are affected, are subject to Heraeus' prior written consent.

9.3 As further security for Heraeus' claims described in clause 9.1, the customer will assign immediately to Heraeus those claims - including claims from open bills or current account - which may arise against his contracting partners or third parties from the resale of the original or modified products. Heraeus accepts this assignment of claims, which consists of its interest in the products sold by its customer to third parties. Heraeus' interest is the invoice amount (including VAT) of its products sold to the customer.

9.4 The customer may collect the assigned future claims outlined in clause 9.3 within the scope of his ordinary and proper course of business. This authorization of collecting assigned future claims includes the direct debiting of claims, always provided, however, that the customer ensures by prior agreement with his bank that the amounts received are exempt from the bank's lien and that the customer is thus able to meet his obligation to transfer his proceeds to Heraeus at any time. This authorization of collecting assigned future claims expires as soon as the customer defaults in the payment of his liabilities to Heraeus. Upon the expiration of such authorization, Heraeus is entitled to disclose the assigned claims and demand any and all information and documentation from the customer required for the assertion of these claims.

9.5 As long as the title to the property delivered has not passed from Heraeus (9.1), any improvement of or additions to these products will be considered to be in part those of Heraeus, without, however, obligating it in any way or manner. Heraeus thus acquires by accession a co-ownership in the property. The amount of this co-ownership is determined by the ratio between the value of the products subject to the reservation of title used for the additions to the property and the value of the property at the time of

accession. The value added due to the accession remains untouched and shall be due to the customer. The customer's purchase lien to the products subject to the reservation of title extends to the co-ownership of Heraeus. The customer shall be free to dispose of Heraeus' co-ownership subject to the foregoing stipulations.

9.6 Should the actual value of the securities existing for Heraeus exceed the secured claims of Heraeus by more than 10% - be it solely on the basis of this reservation-of-title stipulation or together with other securities - Heraeus shall be obliged to release additional securities of its own choice upon the customer's request.

10 Setoff - Retention

10.1 The customer's right of setoff is limited to uncontested or non-appealable claims only.

10.2 The rights of retention pursuant to Section 273 of the German Civil Code (BGB) and Sections 369 et seq. of the German Commercial Code (HGB) shall be due to the customer only in as much as the claim substantiating these rights is based on the same legal relationship as the claim of Heraeus. This limitation does not apply if the customer's counterclaims are uncontested or non-appealable. The customer shall not be entitled to satisfy his claim pursuant to Section 371 of the German Commercial Code (HGB).

11 Weight Accounts for Precious Metals

11.1 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.

11.2 Each account holder acquires by accession a co-ownership in the total existing stock of precious metals, which is expressed in and limited to the troy weight of each precious metal credited to his account. In case of a purchase or sale of precious metals, the passing of the title is effected by a credit or debit entry in the respective weight account.

12 Competent Courts

12.1 The parties hereto will first attempt to settle all their legal and technical disputes through negotiation. If no compromise can be reached, then the Frankfurt courts, in the State of Hessen, Germany, shall be the competent courts for all legal actions that may arise between the parties.

12.2 However, Heraeus shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the law of the Federal Republic of Germany or the law of the country in which the customer has his registered place of business.

13 Miscellaneous

13.1 Place of performance for the customer's payments shall be Heraeus' registered place of business.

13.2 Should any clause, paragraph, sub-paragraph, sentence or phrase of these General Terms of Delivery be or become invalid or unenforceable, then such clause, paragraph, sub-paragraph, sentence or phrase shall be deemed separated from the rest of

these General Terms of Delivery, which shall remain in full force and effect.

13.3 These General Terms of Delivery and any agreement between the parties shall be governed by and construed in accordance with the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) and the Law of Conflict of Laws. Any reference to other legal systems is excluded.