

Heraeus – General Terms of Purchase 09/2009

1 Scope

All purchase orders (deliveries of goods and provision of services) of Heraeus Holding GmbH and of the companies affiliated to it and domiciled in Germany ("Heraeus") are subject to the following General Terms of Purchase ("GTP") only. Supplier's general terms and conditions which deviate from these GTP or the provisions of law will not be accepted by Heraeus except with its express prior written consent. The supplier's general terms and conditions will also not become part of a contract between Heraeus and the supplier even if Heraeus, although being aware of the supplier's deviating or contravening terms and conditions, takes delivery of goods, accepts services or effects payment for such deliveries or services.

2 Offer and Formation of a Contract

2.1 All orders, agreements and changes shall be binding only if placed or confirmed by Heraeus in writing. All correspondence must be exchanged with the purchasing department of Heraeus.

2.2 Orders placed by Heraeus without a time limit for acceptance may be accepted by the supplier only within fourteen (14) days from the order date.

2.3 Quotations are binding and non-refundable unless otherwise expressly agreed in writing.

2.4 In case of any deviation or variance between the supplier's order confirmation and Heraeus' purchase order, a contract shall be formed only if the supplier has expressly advised Heraeus of the deviation and Heraeus has agreed to such deviation in writing.

3 Examination and Procurement Duties

3.1 Within the scope of its general and special professional knowledge, the supplier shall examine all drawings, calculations, specifications and other terms of reference provided by Heraeus for errors and inconsistencies on its own initiative and shall report to and clarify with Heraeus all concerns or objections, if any, promptly in writing.

3.2 The supplier is fully liable - also without fault on its part - for the procurement of all subcontracted materials and for all services which are required for the goods ordered by Heraeus.

4 Delivery; Supplier's Lien

4.1 The period of delivery/performance specified by Heraeus in the purchase order is binding. If the purchase order does not specify such period, delivery of the goods or performance of the service, respectively, shall be effected within fourteen (14) days after the date of the purchase order.

4.2 If the supplier is unable to comply with the binding period of delivery/performance, set forth in clause 4.1, the supplier shall notify Heraeus promptly and advise a practicable date for the delivery/performance. In addition, the supplier is committed to notify Heraeus without request of any difficulties in delivery/performance which may arise, for any reason whatsoever, immediately after such difficulties have come to the supplier's knowledge.

4.3 The supplier is obligated to strictly comply with all instructions and requirements of Heraeus as regards mode of transport, forwarding agent, and shipping instructions.

4.4 All deliveries and services shall be effected DDP "Point of Use" (Incoterms 2000). If delivery is made to construction sites or directly to third parties, unloading shall be at the cost and risk of the supplier.

4.5 Partial deliveries, overdeliveries or under-deliveries are permissible only with the express written approval of Heraeus, except in case Heraeus can be reasonably expected to accept such type of delivery. The supplier is committed to attach to each shipment a delivery note exactly specifying the contents of the shipment, the net weight per item, and the complete SAP purchase order number of Heraeus.

4.6 The unconditional acceptance by Heraeus of a late delivery or late performance does not constitute a waiver by Heraeus of any compensatory claims arising to it from such late delivery or late performance; the foregoing shall apply until Heraeus has fully settled all payments owed by it for the goods or services so affected.

4.7 With regard to quantities, weights and dimensions, the figures determined by Heraeus during its incoming inspection shall be controlling, unless otherwise evidenced by the supplier.

4.8 The supplier shall provide reasonable assistance to Heraeus in obtaining preferential tariffs and other governmental benefits and submit to Heraeus all supporting records and documents, especially certificates of origin, which are requested by Heraeus for this purpose.

4.9 If any payment instruments, shipping documents, certificates of origin or sales tax vouchers are missing, improper or incorrect, Heraeus reserves the right to refuse acceptance of the goods at the supplier's cost and risk.

4.10 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges, unless otherwise agreed.

4.11 Any contractual liens and reservations of title by the supplier are in any case subject to a separate written agreement between Heraeus and the supplier.

5 Force Majeure

Acts of God, labor disputes, operational breakdowns through no fault or negligence of Heraeus, actions by any governmental authority and other events or circumstances beyond Heraeus' control will entitle Heraeus - notwithstanding any other rights or remedies available to it - to rescind the contract in whole or in part if such circumstances or events continue for a significant period of time and result in a substantial decrease in Heraeus' demand.

6 Contractual Penalties

6.1 In the event that the supplier defaults in the timely performance of its duty to deliver/provide a service, Heraeus may claim a contractual penalty at the rate of 0.5% of the aggregate order value for each commenced calendar week of the supplier's default, but no more than 5% of the aggregate order value. This shall not apply if the supplier furnishes valid proof that the default was caused by reasons beyond the supplier's control.

6.2 The contractual penalty pursuant to clause 6.1 shall be incurred as soon as the supplier defaults in delivery. The contractual penalty is immediately due for payment.

6.3 Heraeus may assert the contractual penalty in addition to its claim for performance of the supplier's duty to deliver. If Heraeus accepts the supplier's delayed performance, Heraeus may claim the contractual penalty also if it has not expressly reserved this right at the time of receipt of delivery. Heraeus shall be obligated to declare the reservation of its right to assert the contractual penalty no later than at the time of its final payment of the delivery concerned. This declaration of Heraeus may be given on a printed form.

6.4 The assertion of any further damage by Heraeus shall not be excluded, but the contractual penalty pursuant to clause 6.1 shall be set off against any such further damage.

7 Claims for Defects; Recourse and Product Liability; Insurance

7.1 The supplier is responsible for the perfect condition of the goods delivered and the services provided and for the existence of warranted characteristics. The supplier is in particular responsible for the conformance of the goods and services to the state of the art, to the generally accepted technical and occupational health and safety regulations of public authorities and trade associations, and for the compliance of the goods and services with all applicable laws.

7.2 Acceptance by Heraeus of the goods and services subject of the contract is subject to an inspection for defects and, in particular, for correctness, completeness and fitness for the intended purpose. Heraeus is entitled to inspect the goods delivered or the services provided to the extent and as soon as reasonably practicable within its ordinary course of business. Heraeus will give notice of obvious and easily recognizable defects within fourteen (14) days after delivery. Above and beyond the foregoing, Heraeus will give notice of defects immediately upon their discovery. In this regard, the supplier waives the defense of a belated notice of defects.

7.3 The statutory provisions on material defects and defects of title shall apply, except as otherwise provided hereinbelow.

7.4 If the supplier, within the scope of subsequent performance of the contract, remedies a defect by rectification or by delivery of a faultfree product, the statutory warranty periods will commence to run again.

7.5 If the supplier defaults in its duty of subsequent performance of the contract within a reasonable time period fixed by Heraeus without having the right to refuse such subsequent performance, Heraeus is entitled to itself remedy, or cause to be remedied by any third party, the defect at the cost of the supplier and to claim from the supplier an advance payment of the costs thereby incurred.

7.6 All costs arising to Heraeus from the supplier's delivery of defective goods or provision of defective services, especially travel and transport expenses, labor and material costs, and the costs of an incoming inspection exceeding the usual scope, shall be borne by the supplier.

7.7 The supplier is obligated to indemnify and hold Heraeus harmless from and against any and all product liability claims, and from any loss or damage arising therefrom, if and to the extent that such claims are attributable to a defect in the goods delivered/manufactured or the services provided by the supplier. If a product liability claim under strict liability should be asserted or entered against Heraeus, the foregoing shall apply only if the supplier is at fault. If the cause of the loss or damage is within the responsibility of the supplier, the burden of proof shall rest on the supplier. In such case, the supplier shall bear any and all costs and expenses necessarily incurred, including the costs of bringing an action or the costs generated by a product recall. Heraeus will inform the supplier of the scope and content of such product recall to the extent practicable and reasonable.

7.8 The supplier commits also to take out and maintain a product liability insurance with adequate coverage.

8 Infringement of Third Party Property Rights

The supplier is liable that no patent rights or other property rights of any third party are infringed by or in connection with the supplier's delivery of goods or provision of services, and the supplier will, upon first written request, indemnify and hold Heraeus harmless from and against any and all claims which are asserted or entered against Heraeus by any third party on account of the infringement of a patent or other property right. The supplier will reimburse Heraeus for all necessary costs and expenses arising to Heraeus out of or in connection with such third party claims. Irrespective of the foregoing, Heraeus shall be entitled to enter with any third party into agreements on the alleged infringement of property rights, especially compromise settlement agreements, also without the consent of the supplier.

9 Invoices and Payment Due Date

9.1 All invoices must specify the SAP purchase order number of Heraeus, the exact description and quantity of the goods delivered or services provided, and the price per unit or quantity. All invoices must be sent to the address specified in the purchase order. Payment by Heraeus shall not be due until Heraeus' receipt of a correct and complete invoice.

9.2 Unless otherwise agreed, Heraeus will pay all invoices within fourteen (14) days after receipt less 3% discount, or within sixty (60) days net from the date of the invoice.

10 Industrial Property Rights and Know-How

10.1 All right, title and interest in and to any models, samples, drawings, software, documentations and other records as well as all right, title and interest in and to any materials, tools, production and testing equipment and know-how disclosed or released by Heraeus to the supplier shall remain vested solely in Heraeus. Any such items, information and documents must be treated as confidential and may not be transmitted to any third party, unless with the express prior written consent of Heraeus and unless such third party is bound by the same obligations of confidentiality.

10.2 All rights, items and documents set forth in clause 10.1 must be returned to Heraeus, without request, immediately upon performance of the contractual obligation or when they are no longer required by the supplier. Any other use or disposal, whether in fact or in law, and/or any direct or indirect exploitation of such rights, items and documents by the supplier or any third party is expressly prohibited.

10.3 In the case of research, development, construction, engineering or other contracts covering the elaboration of a solution to a technical problem, all right, title and interest in and to any inventions made by the supplier in performing the contract as well as any patents to be applied for, already applied for, or granted on such inventions shall be exclusively due to Heraeus. The same shall apply to any new technical know-how which does not belong to the state of the art. At the request of Heraeus, the supplier will exploit inventions which are made by its employees. The supplier agrees and undertakes to notify Heraeus in writing of any such new technical know-how or employee invention within a period of six (6) weeks. The costs incurred in accordance with the (German) Employees Invention Act will be borne by Heraeus.

11 Heraeus Code of Conduct

By acting responsibly Heraeus wishes to strengthen its good reputation. The principles for responsible action are laid down in the Heraeus Code of Conduct. The supplier commits to comply with all legally binding rules and regulations. This applies in particular to the applicable laws for the protection of fair competition, the export and import prohibitions, the customs and tax regulations, and all rules and regulations for the protection of the environment. The supplier covenants, in particular in its business transactions with Heraeus, not to engage in any bribing of business partners and to ensure for its own staff a fair pay, appropriate working hours, safety at work and a non-discriminating working environment.

12 Miscellaneous

12.1 The place of performance for all payments between Heraeus and the supplier is the registered place of business of Heraeus.

12.2 These General Terms of Purchase and any agreement between Heraeus and the supplier shall be governed by and construed in accordance with the law of the Federal Republic of Germany, 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 (CISG).

12.3 Heraeus and the supplier 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. However, Heraeus shall be entitled to bring, at its sole discretion, an action against the supplier also at the supplier's place of business or at the place of performance.