

**HERAEUS K.K. - TERMS AND CONDITIONS OF SALE**

The following terms and conditions form a part of and apply to all **Heraeus K.K.** ("Heraeus") quotations to and orders from Customer regarding the goods and/or products described in the quotation or order attached ("Goods"). Acceptance of orders by Heraeus is limited exclusively to these terms and conditions together with any attachments and current or subsequent purchase orders signed by an authorized representative of Heraeus (the "Sales Contract"). Conflicting terms and conditions presented at any time by Customer shall not constitute a part of the Sales Contract and the Sales Contract shall be effective based on the terms and conditions herein unless otherwise accepted in writing by Heraeus.

**1. Price of the Goods**

a. The price and time of payment for the Goods are as described in the quotation or order (the "Contract Price"). The Contract Price does not include applicable taxes of any kind in effect on the date of the Sales Contract, unless otherwise stated by Heraeus. Payments not received when due will bear a late payment penalty of 14 % per annum (on a per diem basis based on 365 days a year).

b. Heraeus may, by giving notice to Customer at any time before delivery, increase the Contract Price to reflect any significant increase in the costs of materials or other costs of manufacture of the products, costs of transport, taxes, customs, levies and other public or administrative duties. Customer shall confirm the increased Contract Price within 14 days after receipt of the notice of adaption of the Contract Price by Heraeus. If Customer does not confirm the increased Contract Price, Heraeus may terminate the Sales Contract by giving written notice to the Customer.

**2. Delivery**

c. Any dates quoted for delivery of the Goods are approximate only and Heraeus shall not be liable for any delay in delivery of the Goods howsoever caused. If Heraeus fails to deliver the Goods for any reason other than any cause beyond Heraeus' reasonable control or Customer's fault, and Heraeus is accordingly liable to Customer, Heraeus' liability shall be limited to the excess (if any) of the cost to Customer of similar Goods to replace those not delivered with the price of the Goods.

d. Goods will be deemed accepted upon delivery unless Customer rejects the Goods within five (5) business days of arrival at Customer's designated destination. Claims for shortages, damage, or visible defects must be made in writing within that time period.

e. Title to the Goods shall pass to Customer when Heraeus has received payment in full of the purchase price of the respective Goods.

f. The Goods supplied will be substantially in accordance with the specifications provided to Customer, subject to reasonable variations plus or minus. Heraeus shall not be responsible for performance figures given in any source other than the specifications.

**3. LIMITED WARRANTY AND DISCLAIMER**

a. Heraeus warrants that the Goods will be free from defects in workmanship and materials and will conform to applicable specifications for a period of six (6) months from the date of receipt by Customer (the "Warranty Period"). This Warranty extends only to the original Customer of the Goods.

b. In the event of a breach of warranty in section 3 a. and provided Customer gives notice in writing to Heraeus during the Warranty Period, Heraeus shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at Heraeus' sole discretion, refund to Customer the price of the Goods. Heraeus may require inspection of the defective or non-conforming Goods.

c. THE WARRANTY AT 3A ABOVE 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 CUSTOMER.

**4. LIMITED LIABILITY**

EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY HERAEUS' NEGLIGENCE OR FRAUDELENT

MISREPRESENTATION (1) HERAEUS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF PROFIT OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS FOR CONSEQUENTIAL COMPENSATION WHATSOEVER WHICH ARISES OUT OF OR IN CONNECTION WITH THE SUPPLY OF THE GOODS OR THEIR USE OF RESALE BY CUSTOMER, EXCEPT AS EXPRESSLY PROVIDED IN THESE CONDITIONS; (2) HERAEUS' ENTIRE LIABILITY TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH THIS SALES CONTRACT, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE SHALL IN NO EVENT EXCEED THE PURCHASE PRICE (TO THE EXCLUSION OF THE VALUE OF PRECIOUS METALS IF PRECIOUS METALS ARE INVOICED SEPARATELY) OF THE DEFECTIVE GOODS.

**5. Explanation of Precautions for Use**

a. If necessary, Heraeus shall explain warnings, precautions, directions, etc. for use and handling of the Goods ("Precautions" hereinafter) to Customer orally or in writing, in which case Customer agrees to comply with such Precautions.

b. In the event that Customer wishes to transfer the Goods to a third party or to allow a third party to use the Goods, Customer agrees to explain the relevant Precautions to the relevant third party in accordance with the preceding paragraph and to impose upon such third party obligations to comply with such Precautions.

**6. Notification, Cooperation in Case of Incidents**

Should a third party sustain property or physical damage due to the Goods or should any disputes arise with a third party, including but not limited to receipt of complaint or warning statement, etc., Customer agrees to promptly notify Heraeus of such incident.

**7. Confidentiality**

Customer and Heraeus agree to keep confidential any and all information concerning the other party that may be obtained during the course of the performance of this Sales Contract and to refrain from disclosing or divulging the same to any third party.

**8. No Transfer of Contractual Status, etc.**

Neither Customer nor Heraeus shall transfer the contractual status or rights or obligations hereunder to any third parties without the written consent of the other party.

**9. Acceleration clause**

a. Should any of the following items apply to Customer, Heraeus may cause Customer's obligations hereunder to be accelerated and demand immediate payment for all remaining obligations without any notification:

b. Customer violates this Sales Contract or any other contract between Customer and Heraeus and fails to correct such violation within the reasonable period designated in a notification issued by Heraeus demanding such correction.

c. A petition for bankruptcy, civil rehabilitation or corporate reorganization is filed by or against Customer, or proceedings for special liquidation against Customer are commenced.

d. Customer is subject to compulsory execution, a petition for auction, temporary restraining order, or disposition of delinquency.

e. Customer adopts a resolution for dissolution other than by merger.

f. Heraeus deems any cause exists that renders it difficult to maintain Customer's business operations.

g. Should any of the items in the preceding article apply to Customer, Heraeus may choose to terminate this Sales Contract without notification, whether in whole or in part.

**10. Governing Law, Arbitration and Venue.**

The Sales Contract will be construed in accordance with and governed solely by the laws of Japan, without regard to its conflict of laws rules. Any dispute arising out of this Sales Contract shall fall under the exclusive jurisdiction of the Tokyo District Court.