

## 1. Scope of Application

1.1 These Refining Conditions ("**Terms**"), together with Heraeus' quotation ("**Quotation**"), govern the refinement and the purchase of precious metal-containing material described in the Quotation ("**Refining Material**") by Heraeus South Africa (Pty) Ltd. or Heraeus PGM SA (Pty) Ltd. (each referred to as "**Heraeus**") and contain the entire agreement and understanding between the parties. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. Any additional terms and conditions are hereby rejected unless accepted with Heraeus' prior written and signed consent.

1.2 The Quotation is only binding upon the Heraeus entity set forth in the Quotation. Any joint responsibility and/ or liability is expressly excluded.

1.3 Prior to the delivery of the Refining Material to Heraeus, the customer must make a binding decision as to whether the Refining Material is to be sold to Heraeus (purchase contract) or to be delivered to Heraeus for refining and return of the precious metal (toll refining order).

## 2. Delivery of the Refining Material

2.1 The Refining Material shall be delivered "DDP", Incoterms 2020 (place of destination as indicated in the Quotation).

2.2 Refining Material may only be provided by the customer to Heraeus after Heraeus has (i) received all information and documentation requested in the Quotation and (ii) approved delivery in writing. In no event may Refining Material with a content of radioactive isotopes of 1000 nS/h or higher be delivered to Heraeus. Refining Material with a content of radioactive isotopes below 1000 nS/h, but above 200 nS/h, may be delivered only with Heraeus' prior written consent.

2.3 Acceptance of Refining Material which is provided to Heraeus in violation of Sec. 2.1 or Sec. 2.2 will, at Heraeus' discretion, be either (i) subject to a surcharge as reasonably stipulated by Heraeus or (ii) refused with the Refining Material being returned to customer at customer's risk and expense. In addition, Heraeus reserves the right to assert claims for damages.

2.4 During an incoming inspection of the Refining Material, Heraeus will determine the type and number of containers and check the containers for visible and, in Heraeus' sole determination, significant external damages.

If Heraeus discovers any damages or inconsistency according to Sec. 2.4, Heraeus will inform the customer. In this case, the agreed Precious Metal Availability (as defined in Sec. 8.1) will be extended as agreed between the parties, however, at least by the same time the parties take to agree on a solution. Heraeus is not obligated to conduct any further inspection other than as set forth in Sec. 2.4. Especially, Heraeus is not obliged to open the containers or to check the delivered material for consistency with any documentation provided by the customer.

2.5 If Heraeus discovers at any stage that the Refining Material is not consistent with the documentation provided by the customer, Heraeus must inform the customer of the respective inconsistencies only if Heraeus refuses to perform the refining based on these inconsistencies or at the agreed commercial conditions.

## 3. Title to the Refining Material

3.1 In case of a toll refining, the customer will keep title to the Refining Material, and the precious metals contained therein, until settlement pursuant to Sec. 8. Upon such settlement, title to all such materials will transfer to Heraeus. Heraeus will credit the Precious Metal Credit determined upon the Settlement to the customer's precious metal weight account. Heraeus has no obligation to treat, store, return or refund and is further not liable for any loss of other items (if any) contained in the Refining Materials except the Precious Metal Credit of the Covered Precious Metals. In case that Heraeus provides, upon Heraeus' sole discretion, an advance settlement prior to the availability of the Precious Metal Credit, title to all materials, other than the precious metal which is refunded as advance settlement, will transfer to Heraeus upon advance settlement.

3.2 In case the Refining Material is purchased by Heraeus, title to the Refining Material will transfer to Heraeus upon the transfer of the risk of loss and damage according to the relevant Incoterm. In case that Heraeus provides, upon Heraeus' sole discretion, a (full or partial) advance payment, title to the Refining Material will transfer to Heraeus on the earlier of such (full or partial) advance payment or the transfer of risk of loss and damage according to the relevant Incoterm.

3.3 Heraeus has no obligation to treat, store, return or refund and is further not liable for any loss of other items (if any) contained in the Refining Material except the Covered Precious Metals.

## 4. Service Level; Reservation of Self-Supply

4.1 Heraeus will perform its services for the customer with due and reasonable diligence, following the processes and procedures customarily applied by Heraeus. Heraeus does not assume any responsibility beyond performing its services to this standard. In particular, Heraeus does not and cannot guarantee any particular outcome or the successful pretreatment, homogenization, sampling or refining of the Refining Material.

4.2 Heraeus shall not be obligated to perform its services for the customer to the extent and for so long as Heraeus has not been supplied properly and timely by third-party suppliers with the raw materials, precious metals, energies or components which are required for the performance of the contractual services. Heraeus will inform the customer of any impairment in the performance of the contractual services, in particular any impairments relating to the crediting of precious metals, resulting therefrom. In the event of a considerable delay in the performance of the services, both parties shall be entitled to rescind the refining order after a reasonable period of time. In case of such a rescission Heraeus will, if technically feasible, return the Refining Material to the customer in the then current condition. The costs and risk of redelivery shall be borne by the rescinding party.

## 5. Process Description, Determination of Settlement Weight

5.1 Pretreatment, homogenization, weighing, sampling, determination of moisture and Settlement Value (as defined in Sec. 6.1) and refining (together the "**Process**") will be performed consistent with the processes and procedures customarily applied by Heraeus and are binding for the customer.

5.2 Where necessary, certain materials (e.g. inerts) will be removed prior to or during the Process from the Refining Material in consultation with the customer. Customer's title in these materials will lapse.

5.3 Heraeus will extract at least the agreed number of samples. From the extracted samples, an agreed number of samples will be given to the customer. The date of sampling depends on capacity utilization.

5.4 To the extent practicable without interfering with normal working procedures at Heraeus, an authorized representative of the customer or of an authorized supervising company may attend certain steps of the Process at the customer's expense and shall accept the sampling protocol.

5.5 The weight of the homogenized Refining Material less (a) the weight of the samples (b) the weight of materials removed according to Sec. 5.2 and (c) any weight reduction from Heraeus' customary processes (e.g. loss of drying, melting, ignition) will be the settlement weight relevant for final settlement ("**Settlement Weight**").

5.6 Heraeus will keep unused samples for six months after the date of collection of the sampling protocol.

5.7 Upon completion of sampling, Heraeus is entitled to commence with the refinement of the Refining Material.

## 6. Determination of the Settlement Basis

6.1 If the customer does not elect an exchange of settlement values according to Sec. 6.2, the settlement value proposed by Heraeus on the samples ("**Settlement Value**") shall be the settlement basis for final settlement ("**Settlement Basis**") (in percent and, multiplied with the Settlement Weight, in grams). Any

objections against a Heraeus Settlement Value must be raised by the customer within 15 days after the Settlement Value was proposed to the customer. The absence of a timely objection will be deemed to constitute approval by the customer of the Settlement Value proposed by Heraeus as Settlement Basis.

6.2 If the customer elects a process with exchange of Settlement Values according to this Sec. 6.2, each party shall independently propose a Settlement Value for the determination of the Settlement Basis and such settlement proposal shall be exchanged simultaneously in an agreed format (e.g. registered mail or email) on a date to be agreed upon in advance between the parties. Thereafter:

6.2.1 If the exchanged Settlement Values fall within the splitting limits, the arithmetic mean of the exchanged Settlement Values will be the Settlement Basis. The splitting limits are set forth in the Quotation.

6.2.2 If the exchanged Settlement Values are outside the splitting limits, the parties will mutually decide to either (i) amicably agree on a Settlement Basis (ii) repeat the exchange of the Settlement Values once more, in which case the second exchange will automatically supersede the results of the first exchange, or (iii) request a neutral umpire laboratory to conduct an umpire assay according to Sec.6.2.3.

6.2.3 The umpire laboratory will be selected from a pre-approved list provided with the Quotation after eliminating: (a) any laboratory that represented either party at the sampling of the Refining Material; (b) any laboratory that conducted assays for any party and (c) one laboratory by each party for any or no reason.

6.2.4 If the result obtained by the umpire (calculated as the arithmetic mean of the results determined by the umpire) falls between the Settlement Values of the parties, the arithmetic mean of the umpire's result and the Settlement Value that is closest to the umpire's result shall be the Settlement Basis. If the result of the umpire is outside the Settlement Values of the parties, the Settlement Value that is closest to the umpire's result will be the Settlement Basis.

6.2.5 The comparison between the Settlement Values of the parties or with the umpire results shall always be made between the respective values in grams. These are determined as follows: Settlement Value in % x Settlement Weight. In the case of a loss on ignition, the loss on ignition determined by the respective party shall be taken as a basis for the determination of such party's Settlement Value respectively umpire value.

6.2.6 The cost of the umpire must be paid by the party whose Settlement Value deviates most from the umpire's result.

6.2.7 If the customer fails to engage in an exchange of the Settlement Values for longer than 3 months, the Settlement Value proposed by Heraeus will be the Settlement Basis.

6.3 Regardless whether a process with or without exchanges of Settlement Values was elected by the customer, only the precious metals that have been agreed between the parties ("**Covered Precious Metals**") will be included in Heraeus' statement of Settlement Values and subsequently refunded to the customer, or, if applicable, purchased by Heraeus.

## 7. Determination of Precious Metal Credit

7.1 The precious metal credit (in the agreed unit of weight) ("**Precious Metal Credit**") for each Covered Precious Metal will be determined as follows:

Precious Metal Credit =

Settlement Basis in grams x Return Rate

7.2 Any "Minimum Deduction" set forth in the Quotation will be deducted from the Precious Metal Credit.

## 8. Final Settlement

8.1 In order for Heraeus to be able to credit or refund the Precious Metal Credit to the customer and, in particular, to finance it, Heraeus is dependent on the refinement of the Refining Material so that the precious metals thereby recovered can be further used by Heraeus. The final settlement will therefore be made in parallel with the refinement of the Refining Material in the ordinary course of business within the availability period set forth in the Quotation ("**Precious Metal Availability**"). If the Precious Metal Availability HZA/HSA(HPM)/GCM-14322/2017 / (11/2022)

is expressed in days, the term "days" shall mean working days, to the exclusion of Saturdays, Sundays, legal holidays in the Republic of South Africa.

8.2 The Precious Metal Availability will be extended by the number of days on which the refinery used by Heraeus for the concret Refining Material (which could also be located in a different country and be operated by an affiliated company of Heraeus) is closed in accordance with standard practices customary in this line of trade, such as scheduled shutdowns, days between public holidays where companies are closed (so called "bridge days"), annual physical inventory, or plant maintenance and repair work affecting the operation of the refinery. The foregoing does not apply to breakdowns of the refinery for which Heraeus is responsible due to lack of maintenance or repair.

8.3 If during the Precious Metal Availability, an Operation Disruption (as defined below) or a Force Majeure Event (as defined in Sec. 15) occurs which directly or indirectly prevents, restricts or interferes with the refund of the Precious Metal Credit or makes it commercially unreasonable for Heraeus, the Precious Metal Availability will be automatically extended for a period of time that is equivalent to the period of the Operation Disruption or the Force Majeure Event. The following events shall be considered an Operation Disruption: (i) inability or significant impediment or delay to obtain raw materials, other materials, sundry chemicals or utilities necessary for the Process, equipment, energies (especially electricity, gas and fuels) or transportation, (ii) inability or significant impediment to use machinery, facilities or IT systems which are required for the Process, (iii) any delay of the Process attributable to the customer or customer's representative. The Precious Metal Availability will be extended also for the number of days which are required for the issuance of required licensing and approvals by local, state and federal regulatory bodies.

8.4 It is the understanding of the parties that the refining service will be deemed performed by Heraeus upon completion of the final settlement as follows:

8.4.1 In case of a toll refining, final settlement shall be deemed completed once Heraeus has credited the Precious Metal Credit to the customer's precious metal weight account maintained at Heraeus.

8.4.2 In case of a purchase of Refining Material by Heraeus, final settlement shall be deemed completed upon payment of the Purchase Price (as defined in Sec. 11).

## 9. Precious Metal Weight Accounts

9.1 Subject to the customer's acceptance of Heraeus's policy on precious metal weight accounts for, Heraeus will, for each Covered Precious Metal, maintain separate unallocated precious metal weight accounts (also known as precious metal weight accounts) for the customer. Precious metal weight accounts are not depository or warehouse agreements and Heraeus does not maintain, identify, or allocate physical precious metal inventories for or to any precious metal weight account. Any physical metal, however, is fungible and will be dealt with in Heraeus' sole and absolute discretion, including commingling, consignment, lease, or other disposition thereof, subject to undertakings and obligations herein. Any positive balance on a precious metal weight account constitutes a claim for delivery of precious metals in the respective amount according to Sec. 10.

9.2 Precious metal weight account statements will be available for customers for self-review on myheraeus.com. The customer is required to confirm the correctness of precious metal weight account statement twice a year (end of June & end of December) for audit purposes. Therefore, it is required that customers have their own precious metal controls and that the customer maintains their own records of their metal account transactions against which they may reconcile any statements received from Heraeus.

9.3 Any objections against a balance confirmation or a precious metal weight account statement for incorrectness or incompleteness must be raised by the customer by 5<sup>th</sup> July / 5<sup>th</sup> January. The absence of a timely objection will be deemed to

constitute approval by the customer of the applicable balance or precious metal account statement.

9.4 Heraeus may, at any time and without stating reasons, cancel precious metal weight accounts of the customer with written notice. In such a case, the customer's weight account balance must be settled by physical metal delivery and/or relevant sale or purchase transactions, as agreed between Heraeus and the customer, within 10 working days.

#### 10. Further Disposition of Credited Precious Metals

With regard to the precious metals credited to its precious metal weight account, the customer has the following options:

10.1 Sale of the precious metals to Heraeus under a separate to be agreed upon purchase agreement at the purchase price set forth in Section 11. Payments by Heraeus will not be effected to a third party and are subject to the presentation of an original tax invoice or a document of equivalent evidentiary value.

10.2 Physical return to customers licenced to receive unwrought precious metals subject to applicable rule or law:

|           |                   |
|-----------|-------------------|
| Platinum  | sponge, 99.95 %*  |
| Gold      | granules, 99.95 % |
| Silver    | granules, 99.95 % |
| Iridium   | powder, 99.90 %*  |
| Rhodium   | powder, 99.90 %*  |
| Palladium | sponge, 99.95 %*, |
| Ruthenium | powder, 99.90 %*  |

\* this value may be further reduced by a loss of reduction (LOR) or loss on ignition (LOI) not exceeding 0.05%.

Provision of the precious metals for return FCA Heraeus (Incoterms 2020) may take up to 10 working days after Precious Metal Availability.

10.2.1 Return of the precious metals as part of products purchased by the customer from Heraeus under a separate to be agreed upon purchase agreement.

10.2.2 Holding the precious metal balance in the precious metal weight account at Heraeus.

10.2.3 Transfer to other precious metal weight accounts subject to Heraeus' consent at additional costs.

#### 11. Purchase of the Refining Material

11.1 In case of Heraeus' purchase of the Refining Material, the purchase price is calculated as follows:

Purchase Price = Precious Metal Credit x Price Base upon Pricing Date "**Price Base**" shall mean the current Heraeus' bid price as forth on

[https://www.heraeus.com/en/hpm/pm\\_prices/prices/prices.html](https://www.heraeus.com/en/hpm/pm_prices/prices/prices.html), unless set forth otherwise in the Quotation. "**Pricing Date**" shall mean the first working day following the elapse of the Precious Metal Availability, unless set forth otherwise in the Quotation.

11.2 The relevant payment terms are set forth in the Quotation.

#### 12. Commercial Terms

12.1 Subject to these Terms, the fees to be paid by the customer to Heraeus for the contractual service, the payment terms, the Return Rate, the Minimum Deduction and the Precious Metal Availability (together the "**Commercial Terms**") ensue from the Quotation. Invoicing shall be effected upon final settlement and payment is due according to the terms agreed and stated on the invoice.

12.2 Heraeus shall be entitled to reasonably increase, upon Heraeus' equitable discretion, the fees payable by the customer by giving notice to the customer at any time before delivery, to reflect any significant price increase in the costs of raw materials, energies or supplies, or other costs of manufacture, costs of transport, taxes, customs, levies and other public or administrative duties, or changes in the general economic or legal conditions which result in an adverse cost situation for Heraeus. A significant price increase shall be deemed to exist, by way of example only, but without limitation, in the following cases:

12.2.1 Deviations of more than 20% between the Price Base of a Covered Precious Metal on the last date of the Precious Metal Availability from the Price Base of such Covered Precious Metal on the date of the Quotation;

12.2.2 Increase by more than 3 percentage points of the standard interest rates which Heraeus has to pay for leasing the Covered Precious Metals on the last date of the Precious Metal Availability from the interest rate of such Covered Precious Metal on the date of the Quotation;

12.2.3 Deviations of more than 10% between the costs of manufacture, in particular the costs of raw, auxiliary and operating materials for the Process, and the costs of manufacture on the date of the Quotation;

12.2.4 Any costs increase deriving from changes to taxes, levies and other public or administrative duties.

12.3 Heraeus shall be also entitled to reasonably increase, upon Heraeus' equitable discretion, the fees payable by the customer by giving notice to the customer

12.3.1 if the Refining Material (i) deviates from the information in the Material Questionnaire or any other document describing the characteristics or quality of the Refining Material or (ii) deviates from samples provided; If and to the extent that Heraeus has not yet commenced with the Process at the time when the deviations pursuant to sentence 1 above are discovered, Heraeus will offer the customer the option to take back the Refining Material in lieu of a price increase;

12.3.2 if the quantities of Refining Material contractually agreed or forecasted by the customer per week, month and/or year deviate more than 10% from the quantities of Refining Material delivered.

12.4 Heraeus will not use a price increase, measured against the pricing basis on the date of the Quotation, to generate additional profit at the expense of the customer.

#### 13. Sustainability

Heraeus has set itself the goal of being CO<sub>2</sub> neutral in Scope 1 and 2 (according to the Greenhouse Gas Protocol) at its worldwide production sites by 2025 and to stop using fossil fuels as of 2033. The measures necessary to achieve this goal have significant effects on the infrastructure of Heraeus and will involve considerable investments. Heraeus therefore reserves the right to approach the customer, if necessary, to discuss cost sharing models. The efforts to decarbonize the supply chain and to reduce the CO<sub>2</sub> footprint are a decisive step towards long-term success and the relevance of the business activity of both parties. In addition, Heraeus shall be entitled to reasonably increase the prices payable by the customer subject to twelve months prior notice to the customer if measures leading to a reduction of the CO<sub>2</sub> footprint result in an increase of Heraeus' manufacturing, refining or transportation costs under the agreement. "Reduction of the CO<sub>2</sub> footprint" includes in particular any reduction of CO<sub>2</sub> emissions for raw materials, energy, operating supplies, manufacture, refining, packaging, transport or trade of Products and Processes at Heraeus or the companies affiliated with Heraeus.

#### 14. Securities

14.1 Heraeus shall be obliged to return precious metals to the customer or to carry out instructions of the customer regarding the credit items entered on its precious metal weight account only if and to the extent that the aggregate value of these precious metals exceeds the sum total of all claims which Heraeus may have against the customer arising from the business relationship between the customer and Heraeus.

14.2 Heraeus and the customer agree that Heraeus shall have a lien over a) Refining Material, b) the precious metals recovered therefrom and c) the credit items and all balances standing to the customer on the customer's precious metal weight account referred to in Sec. 9 (together "**the Assets under Lien**") in order to secure any and all claims which Heraeus may have against the customer in law arising from the business relationship between the customer and Heraeus. The foregoing lien shall be created as soon as the Refining Material has been delivered to Heraeus, the precious metals are available or the credit items or the balances in favour of the customer have been created in the precious metal weight account, as the case may be. In the event termination of any refining contract by Heraeus or in the event that the customer files for insolvency or business rescue or that insolvency proceedings are instituted against the customer or its assets are

attached in execution, Heraeus shall be entitled, but not obliged, without first obtaining any order of court, to the extent permissible in law, to cause all or any of the Assets under Lien to be sold either by public auction or private treaty, provided that Heraeus has given the customer not less than seven days' written notice of any such sale, and to use any money received from the sale of any of the Assets under Lien to satisfy any obligations which the Customer may have towards the Heraeus. If the sale proceeds exceed Heraeus claims against the customer, an amount equal to such excess shall be paid by Heraeus to the customer.

14.3 Heraeus may, at any time, set off its own claims (whether for money or the delivery of precious metals) against claims of the customer (whether for money or the delivery of precious metals). If the claim or the counterclaim are for the delivery or the transfer of precious metals, the value of the precious metals shall be determined as follows:

- Gold: based on the P.M. price per troy ounce published by the London Bullion Market Association ("**LBMA**") in Euro on [www.lbma.org.uk](http://www.lbma.org.uk),
- Silver: based on the price per troy ounce published by the LBMA in Euro on [www.lbma.org.uk](http://www.lbma.org.uk),
- Platinum and palladium: based on the P.M. price per troy ounce published in Euro on [www.lppm.com](http://www.lppm.com),
- Iridium, rhodium and ruthenium: based on the Platts Metals Week New York Dealer Mid-Price per troy ounce determined in US Dollar by S&P Global Platts (a division of S&P Global Inc.) on a weekly basis

in each case based on the price valid on the day of dispatch of the declaration of set-off.

If the claim or the counterclaim are for the payment of money in different currencies or if the price determination is conducted in a currency other than ZAR, these currencies shall be converted into ZAR at the ZAR foreign exchange reference rate determined by HSBC Johannesburg on the day of dispatch of the declaration of set-off.

## 15. Force Majeure

15.1 If any performance of contractual obligations is directly or indirectly prevented, restricted or interfered with by reason of any unforeseeable cause not within the reasonable control of the respective party ("**Force Majeure Event**"), the party so affected shall be excused from the performance of its contractual obligations to the extent and for the duration of such prevention, restriction or interference and shall not be liable for any costs or damages incurred by the other or any third party because of non-performance or late performance. In case of a Force Majeure Event, Heraeus shall be entitled, but not obligated, to entrust a third party with the performance of its contractual obligations.

15.2 A Force Majeure Event shall be deemed to exist not only if it is impossible for the party so affected to avoid or overcome the occurrence or the effects of the event which prevents, restricts or interferes with the performance of its contractual obligations but also if the party so affected cannot reasonably be expected to perform its contractual obligations.

15.3 By way of example only, but without limitation, the following shall be considered as Force Majeure Events: Acts of God such as flood, storm, earthquake, compliance with any governmental rules, regulations or orders of any government, public authority or court (e.g. lack of notification, confiscation, expropriation), fire, war, warlike disputes, explosion, riot, insurrection, accidents, terror, piracy, sabotage, invasion, epidemics, pandemics, legitimate industrial action, currency or trade restrictions, embargoes, export restrictions, import restrictions, sanctions, and any operation disruption if caused directly or indirectly by an event outside the reasonable control of the affected party. A Force Majeure Event affecting Heraeus shall also be deemed to exist where Heraeus' sub-suppliers or contractors are affected by any Force Majeure Events.

15.4 Due to the special nature of the precious metal refining business, where the refiner (Heraeus) is dependent on the short-term availability of precious metals through refining for purposes of financing, precious metals settlement and/or physical return of HZA/HSA(HPM)/GCM-14322/2017 / (11/2022)

precious metals, a Force Majeure Event shall also include any event whose occurrence was foreseeable at the time of contracting but which cannot reasonably be avoided or resolved by Heraeus. The foregoing applies in the following cases:

15.4.1 Unavoidable consequences of the Covid-19 pandemic, in particular (i) any acts of any government or public authority, including the imposition of quarantine orders, operational shutdowns or company closures, or other restrictions or prohibitions, or (ii) non-availability of Heraeus' labor force or suppliers required for the proper performance of contractual obligations due to illness, travel restrictions or curfews, or (iii) production capacity restrictions at Heraeus or its suppliers, also due to hygiene measures or split work shifts.

15.4.2 Unavailability of gas on which Heraeus is dependent for the performance of its services.

The cases referred to in Subsections 15.4.1 and 15.4.2 shall be deemed to be Force Majeure Events also on the part of the customer if and to the extent that they delay, restrict or prevent the performance of contractual obligations by the customer.

15.5 If Heraeus is unable to perform the refining of Refining Material properly and timely due to a Force Majeure Event or as result of the effects thereof, Heraeus shall not be obligated (i) to purchase or otherwise obtain precious metals from third parties or (ii) to pay the purchase price for obtaining precious metals from third parties.

15.6 The party affected by a Force Majeure Event shall notify the other party as to the nature and probable duration of the Force Majeure Event. Furthermore, notification of the actual termination of a Force Majeure Event shall also be given as soon as reasonably possible.

15.7 The party affected by a Force Majeure Event shall exercise reasonable commercial efforts to resolve the restrictions caused by the Force Majeure Event as promptly as practicable, provided, however, that the limit for "reasonable commercial efforts" shall be reached when the total costs incurred for the performance of the service, including the expenses for resolving the restrictions, exceed 110 % of the price payable by the customer for the specific service affected by the Force Majeure Event. If the price to be paid by the customer includes separately identified costs arising from or in connection with the delivery or provision of precious metals, these costs will be disregarded in the determination of the value limit.

15.8 If the party affected by a Force Majeure Event is required to incur expenditures for resolving the restrictions caused by the Force Majeure Event which exceed the limit for "reasonable commercial efforts" pursuant to Sec. 15.7 or if the Force Majeure Event continues for an uninterrupted period of forty-five (45) days, each party may terminate any affected contract by giving written notice to the other party or rescind any such contract, provided that the Force Majeure Event is still in effect at the time when written notice of termination is given.

## 16. Representations of the Customer

The customer represents and warrants

16.1 that it is the owner of the Refining Material or that it has the full right of disposal over such Refining Material, and that the Refining Material is free from any third-party claims or liens; and

16.2 that it will carry out all refining orders or sales transactions in its own name and for its own account and that it will not act as undisclosed agent for third parties in connection with any transaction between the customer and Heraeus; and

16.3 that it holds a refining licence, a jeweller's permit or other licence, permit or certificate pursuant to the Precious Metals Act, 2005; and

16.4 that the Refining Material offered for refinement or for purchase is not linked to any unlawful act, nor does it contain any conflict minerals as defined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, under special consideration of ANNEX I to III, and is not related to money laundering, terrorism financing or any other illegal activity; and

16.5 that the refining order is capable of being executed as scheduled in accordance with the Precious Metal Act, 2005; and  
16.6 that it will act in compliance with all statutory provisions that are applicable in connection with the placement and the execution of refining orders, the sale of Refining Material and the delivery of Refining Material; and

16.7 the information and data provided by it, e.g. in the Code of Conduct for Heraeus Precious Metal Suppliers and in the Materials Questionnaire (if requested by Heraeus) are correct and complete and the Customer hereby acknowledges that the information and data so provided by it shall constitute a substantial factor for Heraeus' decision to accept or purchase the Refining Material.

16.8 Heraeus may, at its sole discretion, require the Customer to provide written evidence to substantiate the representations set forth above, especially evidence of the origin of the Refining Material and evidence that the customer is entitled under applicable rule and law to handle Refining Material and the precious metals derived therefrom.

## **17. Termination Rights**

17.1 Without prejudice to any rights which Heraeus may have in law, in terms of this Agreement or in terms of any other agreement between the parties, Heraeus may, in whole or in part, terminate any refining contract for cause with immediate effect respectively, or rescind from the purchase of the Refining Material by giving written notice to that effect to the Customer if, without limitation:

17.1.1 the Refining Material could not be successfully Processed using the methods customarily applied by Heraeus or if a successful Processing is deemed unlikely;

17.1.2 Heraeus in its sole discretion concludes that the refining is not economically viable (i.e., the refining costs are higher than the value of the precious metals expected to be recovered);

17.1.3 the refining order cannot be executed as scheduled in accordance with the Precious Metal Act 2005;

17.1.4 Heraeus obtains factual information which justifies the suspicion that the Refining Material is not delivered or purchased in accordance with applicable rules or law (e.g. that the delivered Refining Material could result from or be related to a criminal offence, or that the refining transaction itself could be part of a criminal offence, or that the customer could be involved in money laundering activities and/or the concealment of stolen goods);

17.1.5 a representation made by the customer pursuant to Sec. 16 is found to be incorrect or incomplete in any material respect or the customer fails to rectify a representation within a reasonable grace period, where applicable; or

17.1.6 the Customer files for insolvency or business rescue or insolvency proceedings are instituted against the Customer or its assets are attached in execution; or

17.1.7 In accordance with Sec. 12.3.

17.2 If it is revealed that the documentation regarding the Refining Material provided by the customer was incorrect or incomplete in any material respect, Heraeus may renegotiate the commercial terms as set forth in Sec. 12.3.1 or terminate the relevant transaction.

17.3 In the event of an termination or rescission of any refining contract or a purchase of Refining Material, Heraeus shall, if technically feasible, return the Refining Material to the customer in the then current condition at the customer's risk and expense. The customer shall not be entitled to assert any claims for compensation or damages against Heraeus due to the termination or rescission and/or the return of the Refining Material.

## **18. Liability**

18.1 For loss of or damage to Refining Material, Heraeus shall be liable for an amount up to, but not exceeding, the value of the Refining Material beginning with the transfer of risk of loss or damage according to the agreed upon Incoterm. However, in case that the Refining Material has been delivered to Heraeus without written consent or with incorrect or incomplete documentation, Heraeus shall be liable only in the case of gross negligence or intent.

18.2 For delay, Heraeus's liability shall be limited to an amount equaling the fees and charges to be paid by the customer to Heraeus for the Process under the affected Quotation.

18.3 Heraeus shall under no circumstances be liable to the customer for any indirect, special, consequential, or punitive loss or damages suffered by the customer, including, without limitation, loss of profit, loss of business and commercial opportunities, pure economic loss, disappointed expectations, costs or expenses incurred, loss of goodwill and other reputational damages.

18.4 The customer is and shall remain liable for all damages attributable to the hazardous nature of the Refining Material until finalization of the Process by Heraeus.

## **19. Export**

19.1 In the event that the import or export of the products or the fulfillment of any of Heraeus' contractual obligations hereto, is directly or indirectly prevented, restricted or interfered with due to an export or import restriction, sanction, quota or prohibition, or failing to receive a necessary licence or consent ("**Export Restriction**"), Heraeus shall, without incurring any liability, be excused from such performance to the extent and for the duration of such prevention, restriction or interference.

19.2 An Export Restriction shall also be deemed to exist, if the fulfillment of Heraeus' contractual obligations is not legally prevented, restricted or interfered with, but Heraeus or an affiliated company of Heraeus may be subject to civil or criminal sanctions due to national or international regulations, in particular export control regulations or other sanctions.

19.3 If the Export Restriction prevents, restricts or interferes with the performance of Heraeus' contractual obligations for a continuous period of more than three months, each party is entitled to terminate the respective refining contract, without incurring any liability in this respect, by giving written notice to the other Party.

19.4 Upon request of Heraeus, customer shall provide Heraeus with all information concerning the final recipient, the final destination, the intended use of the products and, if required, an end-use certificate.

## **20. Applicable Law and Arbitration**

20.1 These Terms shall be exclusively governed by, and construed in accordance with, South African law. The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) shall be excluded.

20.2 Any disputes arising from or in connection with this agreement shall, if so required by either party, by giving notice to that effect to the other party, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator appointed by the parties and, failing agreement between the parties on the appointment of the arbitrator, by AFSA. There shall be no right of appeal as provided for in Article 22 of the aforesaid rules. The language of the arbitration shall be English and the venue shall be Johannesburg.

## **21. Severability, Written Form**

21.1 Should any provisions of these Terms be or become ineffective or impracticable, this will not affect the legal effectiveness of the remaining provisions.

21.2 The parties agree on the written form. No waiver or modification of this written form requirement will be valid or binding unless executed in writing.